FROM THE OFFICE OF
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ATTORNEY AND COUNSELOR AT LAW
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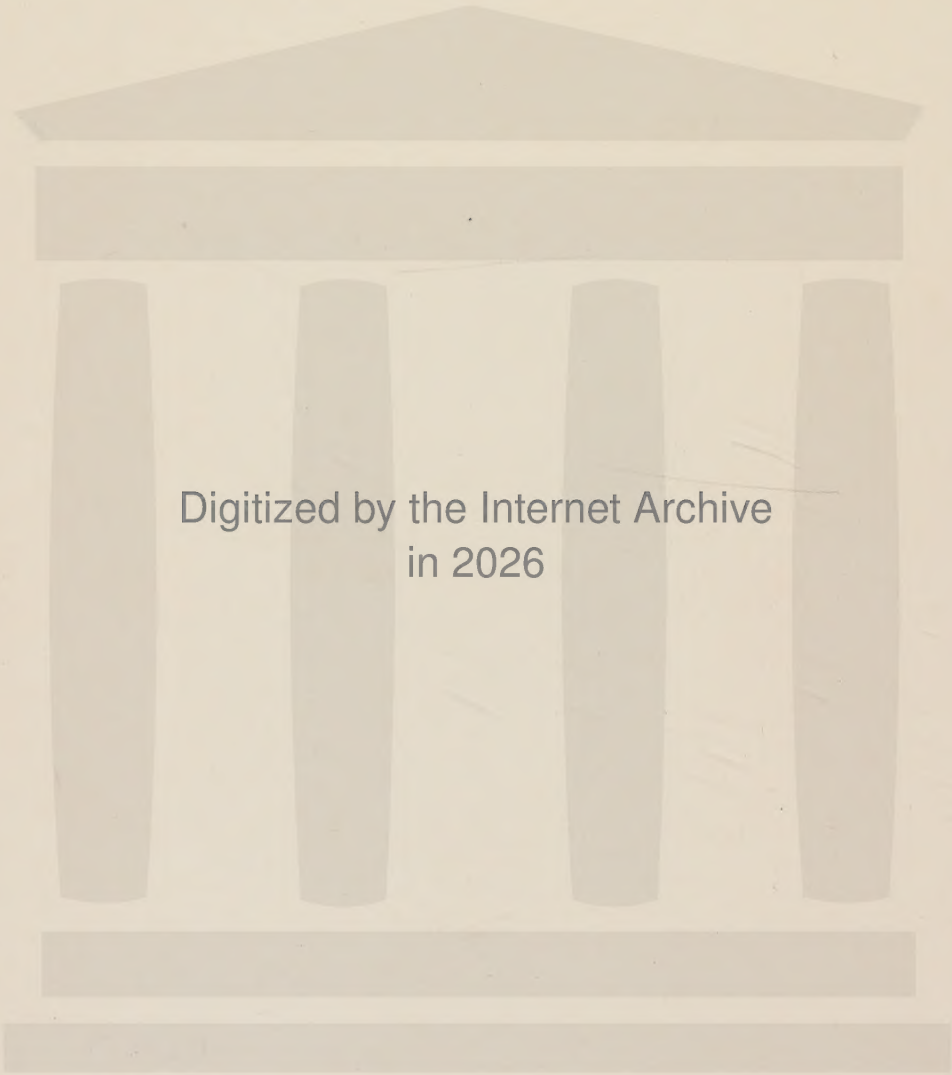

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Sixty-Eighth Congress, First Session - - - - - - - Senate Document No. 154

THE CONSTITUTION

OF THE

UNITED STATES OF AMERICA

AS AMENDED TO DECEMBER 1, 1924

(ANNOTATED)

WITH CITATIONS TO THE CASES OF THE SUPREME COURT OF THE UNITED STATES CONSTRUING ITS SEVERAL PROVISIONS COLLATED UNDER EACH PROVISION

FROM THE OFFICE OF
ROY BRACKETT
ATTORNEY AND COUNSELOR AT LAW
DAVISON BUILDING
HANOVER, N. H.

WASHINGTON
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1924

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COMPILED BY

GEORGE GORDON PAYNE

Under the Direction of

HON. CHARLES CURTIS

Chairman of the Committee on Rules

and

HON. FRANK B. BRANDEGEE

Chairman of the Committee on the Judiciary

United States Senate

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SENATE CONCURRENT RESOLUTION NO. 16

(SUBMITTED BY MR. BRANDEGEE)

Resolved by the Senate (*the House of Representatives concurring*), That five thousand additional copies of the revised annotated Constitution be printed for the use of the Congress, one thousand five hundred copies for the Senate and three thousand five hundred copies for the House of Representatives, and that the Senate Committee on the Judiciary be, and it is hereby, authorized to employ a competent person to assist in bringing the same up to date, his compensation to be paid out of the contingent fund of the Senate: *Provided*, That the Public Printer shall print not more than ten thousand additional copies of said revised annotated Constitution and offer the same for sale at the cost of printing and binding, plus 10 per centum, to persons who agree not to resell or distribute the same for profit.

Passed the Senate, June 3, 1924.

Attest: GEORGE A. SANDERSON,
Secretary.

Passed the House of Representatives June 5, 1924.

Attest: WM. TYLER PAGE,
Clerk.

PREFACE.

The Constitution which was printed as a public document,[1] pursuant to a Senate resolution of April 15, 1913, contained, under each clause, a chronological list of citations of Supreme Court cases—nothing more. The cases treated of the clauses of the Constitution under which they were respectively cited, but it may readily be appreciated that in order to locate a particular point under such large and important clauses—as, for instance, the commerce clause, the contracts clause, or the due process clause—it would be necessary to examine many hundreds of cases.

The present undertaking has probably gone beyond the scope of the work at first contemplated, but it was felt that inasmuch as it was necessary to make a check of the cases in any event it would greatly add to the value of the work to subdivide the subject matter of the clauses of the Constitution into appropriate headings and subheadings, and, while examining the cases to verify their applicability, to make a brief statement of the point involved as applying to that particular clause of the Constitution.[2] This has been done, and, where it seemed necessary, or where the language of the court was so explicit on the point, quotations have been given from the decisions. The annotation is preceded by the full, continuous text of the Constitution, and the literal print, as published by the State Department, with all the original spelling, punctuation, and capitalization, has been used. In the "Notes" which follow, the clauses of the Constitution have been repeated, for convenient reference, immediately following the articles and section or clause number. There then follows, in connection with each clause under which a great many cases have been decided, a list of the leading cases. The analytical index-digest at the end of the document will be found helpful in locating the subjects of the annotation, and its use is recommended.

This compilation, then, is an annotation of the decisions of the United States Supreme Court involving constitutional questions "collated under each separate provision." It contains all such decisions from the first term of the court in 1790 up to and including the October term of 1923. It is perhaps unreasonable to hope that the work is perfect and free from error, although every effort has been made to render it so. Every statement, citation, name, and number has been diligently verified, and the proof reading has been carefully and painstakingly done.

The work is modeled on the lines of the annotation contained in Federal Statutes Annotated, although that admirable work goes

[1] S. Doc. 12, 63d Cong., 1st sess.
[2] See Cong. Rec., Dec. 7, 1921, p. 93, for discussion as to annotations.

far beyond the scope of this document, using a great many more subheadings, going into infinite detail, and giving extracts and quotations not only from Supreme Court decisions but from cases in all the circuit courts, district courts, courts of appeals, Court of Claims, State courts, Opinions of the Attorney General, etc. Recourse has also been had to Compiled Statutes Annotated, Watson on the Constitution, Sutherland's Notes on the Constitution, Evans's Cases on American Constitutional Law, Thayer's Cases, McClain's Cases, Wambaugh's Leading Cases, Modern American Law, Ruling Case Law, Story on the Constitution, Cooley's Constitutional Limitations, Warren on the Constitution, Paschal's Annotated Constitution, Norton's Sources and Application of the Constitution, and Moore on Supreme Court and Unconstitutional Legislation, all of which works should be consulted for a more detailed study of Constitutional Law.

It may be felt by some that many of the quotations used in this work are *obiter dicta*, but it must be remembered that all such *dicta* are not unimportant. Justice Brewer, in delivering the opinion of the court in the case of Wilson *v.* Shaw (204 U. S. 24), after citing various reports of the courts in substantiation of the decision, said:

> Plaintiff, recognizing the force of these decisions, seeks to obviate it by saying that the expressions were *obiter dicta*, but plainly they were not. They announce distinctly the opinion of this court on the questions presented, and would have to be overruled if a different doctrine were now announced. Congress has acted in reliance upon these decisions in many ways, and any change would disturb a vast volume of rights supposed to be fixed; but we see no reason to doubt the conclusions expressed in those opinions, and adhere to them.

The doctrine announced by Chief Justice Marshall in the case of Marbury *v.* Madison (1 Cranch, 137), that acts of Congress in conflict with the Constitution are void, has been much criticized as a usurpation of power not conferred on the court, and was in fact *obiter dicta*, but the doctrine has been consistently followed for over a hundred years. It has been said that the historic importance of the Dred Scott case (19 How. 393), involving the Missouri Compromise and the citizenship of negro slaves, lies in the *dicta* in the opinion of the Chief Justice rather than in the decision of the court that it had no jurisdiction. In Watson *v.* St. Louis, etc., R. Co. (169 Fed. 942), the court said:

> General expressions in an opinion which are not essential to the disposition of the case, on points not presented nor argued to the court, are *obiter*, and are not permitted to control the judgment of the courts in subsequent cases; but when a question is directly involved in the issues raised, is determined by the trial court, is assigned as error on appeal, argued by counsel, and distinctly decided by the court, the decision of such question is not *obiter dictum* although the cause is disposed of on other grounds, and this applies specially when the question involves the power of Congress to enact legislation.

And in the very recent case of United States *v.* Title Ins. Co., 265 U. S. 472, the court said:

> Where there are two grounds upon either of which an appellate court may rest its decision, and it adopts both, the ruling on neither is *obiter dictum*, but each is the judgment of the court and of equal validity. A long-standing decision of a doubtful question which has become a rule of property affecting many land titles should not be disturbed.

It will be found that in a few cases the decisions have characterized former expressions of the court as *dicta* and in still fewer cases the former holdings of the court have been overruled, but such instances are exceedingly rare.

Of all the great mass of Congressional enactments since the beginning of the Federal Government under the Constitution there have been only about 44 acts or parts of acts of Congress declared invalid by the United States Supreme Court. At the end of this document (p. 759) is a chronological list of such acts, and citations to the cases in which they were considered.

GEORGE GORDON PAYNE.

WASHINGTON, D. C., *December 1, 1924.*

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FOREWORD.

In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report (drawn by Mr. Hamilton, of New York), expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason

and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of Government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1789. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of Congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States." (See Revised Statutes of the United States, 2d ed., 1878, p. 17.)

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

LITERAL PRINT

CONSTITUTION OF THE UNITED STATES OF AMERICA.

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of

Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make tem-

porary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried ∧ the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questiond in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any

Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by

two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces:

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use

of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of ^the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a

Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such

Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think

proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III.

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which

shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—betwen a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,

any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

The Word, "the," being interlined between the seventh and eighth Lines of the first Page, The Word "Thirty" being partly written on an Erazure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

Attest WILLIAM JACKSON Secretary

Go WASHINGTON—Presid^{t}
and deputy from Virginia

New Hampshire	JOHN LANGDON NICHOLAS GILMAN
Massachusetts	NATHANIEL GORHAM RUFUS KING
Connecticut	W^{M} SAM^{L} JOHNSON ROGER SHERMAN
New York . . .	ALEXANDER HAMILTON

New Jersey	Wil: Livingston David Brearley. W^m^ Paterson. Jona: Dayton
Pennsylvania	B Franklin Thomas Mifflin Rob^t^ Morris Geo. Clymer Tho^s^ FitzSimons Jared Ingersoll James Wilson Gouv Morris
Delaware	Geo: Read Gunning Bedford jun John Dickinson Richard Bassett Jaco: Broom
Maryland	James M^c^Henry Dan of S^t^ Tho^s^ Jenifer Dan^l^ Carroll
Virginia	John Blair— James Madison Jr.
North Carolina	W^m^ Blount Rich^d^ Dobbs Spaight. Hu Williamson
South Carolina	J. Rutledge Charles Cotesworth Pinckney Charles Pinckney Pierce Butler.
Georgia	William Few Abr Baldwin

In Convention Monday, September 17th 1787.

Present

The States of

New Hampshire, Massachusetts, Connecticut, Mr Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled.

Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires,

to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the Unanimous Order of the Convention.

G°. WASHINGTON Presid^{t}

W. JACKSON Secretary.

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENTS TO THE CONSTITUTION.[1]

Amendment 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 2.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment 3.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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[1] The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the Legislatures of Connecticut, Georgia, and Massachusetts ratified them.

Amendment 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT 11.[2]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT 12.[3]

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this pur-

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[2] The eleventh amendment was submitted to the legislatures of the several States by a resolution of Congress passed on the 5th of March, 1794, at the first session of the Third Congress; and on the 8th of January, 1798, at the second session of the Fifth Congress, it was declared by the President, in a message to the two Houses of Congress, to have been adopted by the legislatures of three-fourths of the States, there being at that time sixteen States in the Union.

[3] The twelfth amendment was submitted to the legislatures of the several States, there being then seventeen States, by a resolution of Congress passed on the 12th of December, 1803, at the first session of the Eighth Congress, and was ratified by the legislatures of three-fourths of the States in 1804, according to a proclamation of the Secretary of State dated the 25th of September, 1804.

pose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT 13.[4]

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

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[4] The thirteenth amendment was submitted to the legislatures of the several States, there being then 36 States, by a resolution of Congress passed on the 1st of February, 1865, at the second session of the Thirty-eighth Congress, and was ratified, according to a proclamation of the Secretary of State dated Dec. 18, 1865, by the legislatures of the following States: Illinois, Feb. 1, 1865; Rhode Island, Feb. 2, 1865; Michigan, Feb. 2, 1865; Maryland, Feb. 3, 1865; New York, Feb. 3, 1865; West Virginia, Feb. 3, 1865; Maine, Feb. 7, 1865; Kansas, Feb. 7, 1865; Massachusetts, Feb. 8, 1865; Pennsylvania, Feb. 8, 1865; Virginia, Feb. 9, 1865; Ohio, Feb. 10, 1865; Missouri, Feb. 10, 1865; Indiana, Feb. 16, 1865; Nevada, Feb. 16, 1865; Louisiana, Feb. 17, 1865; Minnesota, Feb. 23, 1865; Wisconsin, Mar. 1, 1865; Vermont, Mar. 9, 1865; Tennessee, Apr. 7, 1865; Arkansas, Apr. 20, 1865; Connecticut, May 5, 1865; New Hampshire, July 1, 1865; South Carolina, Nov. 13, 1865; Alabama, Dec. 2, 1865; North Carolina, Dec. 4, 1865; Georgia, Dec. 9, 1865.

The following States ratified this amendment, subsequent to the date of the proclamation of the Secretary of State, as follows: Oregon, Dec. 11, 1865; California, Dec. 20, 1865; Florida, Dec. 28, 1865; New Jersey, Jan. 23, 1866; Iowa, Jan. 24, 1866; Texas, Feb. 18, 1870.

AMENDMENT 14.[5]

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

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[5] The fourteenth amendment was submitted to the legislatures of the several States, there being then 37 States, by a resolution of Congress passed on the 16th of June, 1866, at the first session of the Thirty-ninth Congress, and was ratified, according to a proclamation of the Secretary of State dated July 28, 1868, by the legislatures of the following States: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, Sept. 11, 1866 (withdrew her consent to the ratification in April, 1868); Oregon, Sept. 19, 1866 (withdrew her consent to the ratification Oct. 15, 1868); Vermont, Nov. 9, 1866; New York, Jan. 10, 1867; Ohio, Jan. 11, 1867 (withdrew her consent to the ratification in January, 1868); Illinois, Jan. 15, 1867; West Virginia, Jan. 16, 1867; Kansas, Jan. 18, 1867; Maine, Jan. 19, 1867; Nevada, Jan. 22, 1867; Missouri, Jan. 26, 1867; Indiana, Jan. 29, 1867; Minnesota, Feb. 1, 1867; Rhode Island, Feb. 7, 1867; Wisconsin, Feb. 13, 1867; Pennsylvania, Feb. 13, 1867; Michigan, Feb. 15, 1867; Massachusetts, Mar. 20, 1867; Nebraska, June 15, 1867; Iowa, Apr. 3, 1868; Arkansas, Apr. 6, 1868; Florida, June 9, 1868; North Carolina, July 4, 1868; Louisiana, July 9, 1868; South Carolina, July 9, 1868; Alabama, July 13, 1868; Georgia, July 21, 1868.

The State of Virginia ratified this amendment on the 8th of October, 1869, subsequent to the date of the proclamation of the Secretary of State, having theretofore rejected it.

North Carolina, South Carolina, and Georgia had rejected the amendment prior to the dates of ratification noted.

The States of Delaware, Maryland, Kentucky, and Texas rejected this amendment.

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SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT 15.[6]

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United

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[6] The fifteenth amendment was submitted to the legislatures of the several States, there being then 37 States, by a resolution of Congress passed on the 27th of February, 1869, at the first session of the Forty-first Congress; and was ratified, according to a proclamation of the Secretary of State dated Mar. 30, 1870, by the legislatures of the following States: Nevada, Mar. 1, 1869; West Virginia, Mar. 3, 1869; North Carolina, Mar. 5, 1869; Louisiana, Mar. 5, 1869; Illinois, Mar. 5, 1869; Michigan, Mar. 8, 1869; Wisconsin, Mar. 9, 1869; Massachusetts, Mar. 12, 1869; Maine, Mar. 12, 1869; South Carolina, Mar. 16, 1869; Pennsylvania, Mar. 26, 1869; Arkansas, Mar. 30, 1869; New York, Apr. 14, 1869 (withdrew her consent to the ratification Jan. 5, 1870); Indiana, May 14, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; New Hampshire, July 7, 1869; Virginia, Oct. 8, 1869; Vermont, Oct. 21, 1869; Alabama, Nov. 24, 1869; Missouri, Jan. 10, 1870; Mississippi, Jan. 17, 1870; Rhode Island, Jan. 18, 1870; Kansas, Jan. 19, 1870; Ohio, Jan. 27, 1870 (Ohio had previously rejected the amendment May 4, 1869); Georgia, Feb. 2, 1870; Iowa, Feb. 3, 1870; Nebraska, Feb. 17, 1870; Texas, Feb. 18, 1870; Minnesota, Feb. 19, 1870.

The State of New Jersey ratified this amendment on the 21st of February, 1871, subsequent to the date of the proclamation of the Secretary of State (New Jersey had previously rejected the amendment).

The States of California, Delaware, Kentucky, Maryland, Oregon, and Tennessee rejected this amendment.

States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 16.[7]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

AMENDMENT 17.[8]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one

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[7] The sixteenth amendment was submitted to the legislatures of the several States, there being then 48 States, by a resolution of Congress passed on July 12, 1909, at the first session of the Sixty-first Congress, and was ratified according to a proclamation of the Secretary of State dated February 25, 1913, by the legislatures of the following States: Alabama, Aug. 17, 1909; Kentucky, Feb. 8, 1910; South Carolina, Feb. 23, 1910; Illinois, Mar. 1, 1910; Mississippi, Mar. 11, 1910; Oklahoma, Mar. 14, 1910; Maryland, Apr. 8, 1910; Georgia, Aug. 3, 1910; Texas, Aug. 17, 1910; Ohio, Jan. 19, 1911; Idaho, Jan. 20, 1911; Oregon, Jan. 23, 1911; Washington, Jan. 26, 1911; California, Jan. 31, 1911; Montana, Jan. 31, 1911; Indiana, Feb. 6, 1911; Nevada, Feb. 8, 1911; Nebraska, Feb. 11, 1911; North Carolina, Feb. 11, 1911; Colorado, Feb. 20, 1911; North Dakota, Feb. 21, 1911; Michigan, Feb. 23, 1911; Iowa, Feb. 27, 1911; Kansas, Mar. 6, 1911; Missouri, Mar. 16, 1911; Maine, Mar. 31, 1911; Tennessee, Apr. 11, 1911; Arkansas, Apr. 22, 1911; Wisconsin, May 26, 1911; New York, July 12, 1911; South Dakota, Feb. 3, 1912; Arizona, Apr. 9, 1912; Minnesota, June 12, 1912; Louisiana, July 1, 1912; Delaware, Feb. 3, 1913; Wyoming, Feb. 3, 1913; New Jersey, Feb. 5, 1913; New Mexico, Feb. 5, 1913.

The States of Connecticut, Rhode Island, and Utah rejected this amendment.

The following States ratified this amendment subsequent to date of the proclamation of the Secretary of State, as follows: Vermont, Massachusetts, New Hampshire, and West Virginia.

[8] The seventeenth amendment was submitted to the legislatures of the several States, there being then 48 States, by a resolution of Congress passed on 16th day of May, 1912, at the second session of the Sixty-second Congress, and was ratified, according to a proclamation of the Secretary of State dated May 31, 1913, by the legislatures of the following States: Massachusetts, May 22, 1912; Arizona, June 3, 1912; Minnesota, June 10, 1912; New York, Jan. 15, 1913; Kansas, Jan. 17, 1913; Oregon, Jan. 23, 1913; North Carolina, Jan. 25, 1913; California, Jan. 28, 1913; Michigan, Jan. 28, 1913; Idaho, Jan. 31, 1913; West Virginia, Feb. 4, 1913; Nebraska, Feb. 5, 1913; Iowa, Feb. 6, 1913; Montana, Feb. 7, 1913; Texas, Feb. 7, 1913; Washington, Feb. 7, 1913; Wyoming, Feb. 11, 1913; Colorado, Feb. 13, 1913; Illinois, Feb. 13, 1913; North Dakota, Feb. 18, 1913; Nevada, Feb. 19, 1913; Vermont, Feb. 19, 1913; Maine, Feb. 20, 1913; New Hampshire, Feb. 21, 1913; Oklahoma, Feb. 24, 1913; Ohio, Feb. 25, 1913; South Dakota, Feb. 27, 1913; Indiana, Mar. 6, 1913; Missouri, Mar. 7, 1913; New Mexico, Mar. 15, 1913; New Jersey, Mar. 18, 1913; Tennessee, Apr. 1, 1913; Arkansas, Apr. 14, 1913; Connecticut, Apr. 15, 1913; Pennsylvania, Apr. 15, 1913; Wisconsin, May 9, 1913.

vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT 18.[9]

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

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[9] The eighteenth amendment was submitted to the legislatures of the several States, there being then 48 States, by a resolution of Congress passed on 17th day of December, 1917, at the second session of the Sixty-fifth Congress, and was ratified, according to a proclamation of the Acting Secretary of State dated Jan. 29, 1919, by the legislatures of the following States: Mississippi, Jan. 8, 1918; Virginia, Jan. 11, 1918; Kentucky, Jan. 16, 1918; North Dakota, Jan. 28, 1918; South Carolina, Feb. 12, 1918; Montana, Feb. 20, 1918; Texas, Mar. 4, 1918; Maryland, Mar. 12, 1918; South Dakota, Mar. 22, 1918; Delaware, Mar. 26, 1918; Massachusetts, Apr. 2, 1918; Arizona, May 23, 1918; Georgia, July 2, 1918; Louisiana, Aug. 9, 1918; Florida, Dec. 3, 1918; Michigan, Jan. 2, 1919; Oklahoma, Jan. 7, 1919; Ohio, Jan. 7, 1919; Idaho, Jan. 8, 1919; Maine, Jan. 8, 1919; West Virginia, Jan. 9, 1919; Washington, Jan. 13, 1919; California, Jan. 13, 1919; Illinois, Jan. 14, 1919; Indiana, Jan. 14, 1919; Kansas, Jan. 14, 1919; Tennessee, Jan. 14, 1919; Arkansas, Jan. 14, 1919; New Hampshire, Jan. 15, 1919; Colorado, Jan. 15, 1919; Alabama, Jan. 15, 1919; Oregon, Jan. 15, 1919; Nebraska, Jan. 16, 1919; North Carolina, Jan. 16, 1919; Utah, Jan. 16, 1919; Minnesota, Jan. 17, 1919; Wyoming, Jan. 17, 1919; Wisconsin, Jan. 17, 1919; Missouri, Jan. 17, 1919; Nevada, Jan. 17, 1919; New Mexico, Jan. 22, 1919; Iowa, Jan. 27, 1919; Vermont, Jan. 29, 1919; New York, Jan. 29, 1919; Pennsylvania, Feb. 26, 1919.

AMENDMENT 19.[18]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

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[18] The nineteenth amendment was submitted to the legislatures of the several States, there being then 48 States, by a resolution of Congress passed on 5th day of June, 1919, at the first session of the Sixty-sixth Congress, and was ratified, according to a proclamation of the Secretary of State dated Aug. 26, 1920, by the legislatures of the following States: Illinois, June 10, 1919; Michigan, June 10, 1919; Wisconsin, June 11, 1919; Ohio, June 16, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Massachusetts, June 25, 1919; Pennsylvania, June 27, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Nebraska, Aug. 2, 1919; Montana, Aug. 2, 1919; Minnesota, Sept. 8, 1919; New Hampshire, Sept. 10, 1919; Utah, Oct. 2, 1919; California, Nov. 1, 1919; Maine, Nov. 5, 1919; South Dakota, Dec. 4, 1919; North Dakota, Dec. 5, 1919; Colorado, Dec. 15, 1919; Rhode Island, Jan. 6, 1920; Oregon, Jan. 13, 1920; Indiana, Jan. 16, 1920; Kentucky, Jan. 19, 1920; Wyoming, Jan. 27, 1920; Nevada, Feb. 7, 1920; Idaho, Feb. 11, 1920; Arizona, Feb. 12, 1920; New Jersey, Feb. 17, 1920; New Mexico, Feb. 21, 1920; Oklahoma, Feb. 28, 1920; West Virginia, Mar. 13, 1920; Washington, Mar. 22, 1920; Tennessee, Aug. 24, 1920; Connecticut, Sept. 14, 1920; Vermont, Feb. 8, 1921.

The States of Alabama, Virginia, and Maryland rejected this amendment.

FROM THE OFFICE OF
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GENERAL RULES
OF
CONSTRUCTION AND INTERPRETATION
OF THE
CONSTITUTION OF THE
UNITED STATES

CONSTRUCTION AND INTERPRETATION OF THE CONSTITUTION.[1]

General rules.—Chief Justice Marshall, in the celebrated case of McCulloch *v.* Maryland (4 Wheat. 316), said " We must never forget that it is a constitution we are expounding." It is the Constitution of the United States, and that instrument contains the powers and all of the powers that were granted by the people of the then existing states to the general government. Other powers have been granted to the general government only by amendment of the Constitution. Therefore, those powers are limited. The Chief Justice said (p. 421):

> We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

See also Fairbank *v.* U. S., 181 U. S., 283.

Broadly speaking, a constitution is an instrument of government made and adopted by the people for practical purposes. The Constitution of the United States is a grant of power. It should be construed so as best to subserve the great objects for which it was made, and, like every other grant of power, should have a reasonable construction according to its terms, as defined in the vocabulary of the people which adopted it. The safest rule for interpreting the Constitution is to look to the nature and objects of the particular powers, duties, and rights, with all the aids of contemporary history, and to give to the words of each just such operation and force, consistent with their legitimate meaning, as may fairly secure and attain the ends proposed. The very object of constitutional construction is to give effect to the intention of the framers of the instrument, and to the intent of the people in adopting it, and this intent, together with the general scope of the particular provision, is to be kept constantly in view.

Metropolitan Bank *v.* Van Dyck, 27 N. Y. 400.
Spooner *v.* McConnell, 1 McLean, 337.
Jarrolt *v.* Moberly, 103 U. S. 586.
Martin *v.* Hunter, 1 Wheat. 326.
Prigg *v.* Pennsylvania, 16 Pet. 610.
Lake County *v.* Rollins, 130 U. S. 670.
Gibbons *v.* Ogden, 9 Wheat. 188.

[1] See, also, Art. III, sec. 1, " Controlling effect of decisions," p. 420.

No court is authorized so to construe a clause of the Constitution as to defeat its obvious ends, when another construction, equally accordant with the words and sense, will enforce and protect those ends. Where words admit of different intendments, that must be selected which is most consonant to the object in view. If a case is within the letter of the Constitution it is not to be excluded from its meaning by showing that it was not in the minds of those who framed and adopted it; it is further necessary to show that, had the case been suggested, the language would have been changed so as to except it. It must receive a practical construction, and is not to be viewed technically. Its terms are not to be nullified or evaded by astute verbal criticism without regard to the aim and objects of the instrument and the principles on which it was based. It should be so construed as to give effect to its different clauses, as far as possible to reconcile them, and not allow their seeming repugnancy to destroy them.

Prigg *v.* Pennsylvania, 16 Pet. 612.
Aldrich *v.* Kinney, 4 Conn. 380.
Dartmouth College *v.* Woodward, 4 Wheat. 644.
Railroad Co. *v.* Peniston, 18 Wall. 31.
People *v.* Dawell, 25 Mich. 247.
Passenger Cases, 7 How. 283.
Cohens *v.* Virginia, 6 Wheat. 395.

The rule of construction that what is implied is as much a part of the instrument as what is expressed, applies to the Federal Constitution, because of the inherent inability to put into words all derivative powers; but a court has no right to insert anything in the Constitution which is not expressed and which can not fairly be implied, and when the text of a constitutional provision is not ambiguous, the courts are not at liberty to search for its meaning beyond the instrument itself. Affirmative words often imply a negative of other objects than those affirmed, and an exception of any particular case presupposes that those which are not excepted are embraced within the grant or prohibition. Where no exception is made in terms, none will be made by implication or construction.

Ex parte Yarbrough, 110 U. S. 658.
Prigg *v.* Pennsylvania, 16 Pet. 613.
Marbury *v.* Madison, 1 Cranch 173.
Rhode Island *v.* Massachusetts, 12 Pet. 722.

Construction in light of the common law.—The scope and effect of a constitutional provision is often best ascertained by bearing in mind what the law was before, and a provision afterwards changed by amendment should be considered in construing the amendment. The history of the time when a provision was framed and adopted should be examined to determine the old law, the mischief and the remedy, and where it is undoubted that the object of a clause was to incorporate into the instrument certain principles which had become permanently fixed in the law of the mother country, the construction of those principles by the English courts is useful in determining their scope. The construction of many clauses of the Constitution must be had in the light of the common law, unless by a series of decisions by the Supreme Court and the construction

placed upon a particular clause by Congress the words have been considered as having a meaning different from that given to them by the common law.

Ex parte Wilson, 114 U. S. 422.
Fletcher *v.* Peck, 6 Cranch 139.
Brown *v.* Walker, 161 U. S. 591.
U. S. *v.* Wong Kim Ark, 169 U. S. 654.

The adoption of the expressions "pardon," "impeachment," "trial by jury," "felony," "*ex post facto*," "bill of attainder," "*habeas corpus*," "unreasonable searches and seizures," "presentment," "indictment," "infamous crime," "right to be informed of the nature of the accusation," and "twice put in jeopardy," is a recognition of the maxims and essential principles of the common law, and resort may and should be had thereto to ascertain their true meaning. But in holding that an indictment or presentment is not essential to "due process of law," under the fourteenth amendment, when applied to prosecutions for felonies in State courts, it has been said:

In this country written constitutions were deemed essential to protect the rights and liberties of the people against the encroachments of power delegated to their governments, and the provisions of Magna Charta were incorporated into the Bill of Rights. They were limitations upon all of the powers of government, legislative as well as executive and judicial.

Hurtado *v.* California, 110 U. S. 531.
South Carolina *v.* U. S., 199 U. S. 449.
Callan *v.* Wilson, 127 U. S. 549.
Schick *v.* U. S., 195 U. S. 68.
U. S. *v.* Sanges, 144 U. S. 310.
Smith *v.* Alabama, 124 U. S. 478.
Gompers *v.* U. S., 233 U. S. 610.

In view of existing law.—The scope and effect of many of the provisions of the Constitution are best ascertained by bearing in mind what the law was at the time the Constitution and the amendments were adopted and ratified, not as reaching out for new guaranties but as securing such as the law then recognized. The requirement of full faith and credit is to be read and interpreted in the light of well-established principles of justice protected by other constitutional provisions which it was never intended to modify or override. The provision that an accused person shall "be confronted with the witnesses against him" is not infringed by permitting the testimony of witnesses sworn upon a former trial, since deceased, to be read against him. The admission of dying declarations is also an exception to this rule. These exceptions were well established before the adoption of the Constitution and were not intended to be abrogated. Article I, section 10, provides that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws, and what were inspection laws was well understood at the time the Constitution was adopted.

Ex parte Wilson, 114 U. S. 422.
Turner *v.* Maryland, 107 U. S. 52.
Mattox *v.* U. S., 156 U. S. 243.
Bigelow *v.* Old Dominion Copper Co., 225 U. S. 111.
Kirby *v.* U. S., 174 U. S. 47.

Liberal construction.—The Constitution is not to be interpreted with the strictness of a code of laws or of a private contract. The provisions for the protection of life, liberty, and property are to be largely and liberally construed in favor of the citizen. The provision in the fifth amendment that no person shall be compelled to be a witness against himself, which has long been regarded as one of the safeguards of civil liberty, should be applied in a broad spirit, to secure to the citizen immunity from every kind of self-accusation. A literal construction would deprive it of efficacy.

In speaking of the liberal construction to be given to restrictive or prohibitive provisions of the Constitution in the case of Fairbank *v.* United States (181 U. S. 283), the court said:

> If powers granted are to be taken as broadly granted and as carrying with them authority to pass those acts which may be reasonably necessary to carry them into full execution; in other words, if the Constitution in its grant of powers is to be so construed that Congress shall be able to carry into full effect the powers granted, it is equally imperative that where prohibition or limitation is placed upon the power of Congress that prohibition or limitation should be enforced in its spirit and to its entirety. It would be a strange rule of construction that language granting powers is to be liberally construed and that language of restriction is to be narrowly and technically construed. Especially is this true when in respect to grants of powers there is * * * the help found in the last clause of the eighth section, and no such helping clause in respect to prohibitions and limitations. The true spirit of constitutional interpretation in both directions is to give full, liberal construction to the language, aiming ever to show fidelity to the spirit and purpose.

A liberal construction of the words and sentences should generally be given, and nice verbal criticism avoided, though it has been said that the phrase "obligation of contracts" should be construed strictly, and not be latitudinously extended to apply to obligations *quasi ex contractus*, implied contracts, or to obligations *ex delicto*, the obligation to pay damages.

> Lane County *v.* Oregon, 7 Wall. 79.
> Harmanson *v.* Wilson, 1 Hughes (U. S.), 207.
> Matter of Strauss, 197 U. S. 330.

In Trade-Mark Cases (100 U. S. 94), the word "writings" as used in Article I, section 8, clause 8, giving to Congress the power to secure to authors the exclusive right to their respective writings, is liberally construed to include original designs for engravings, prints, etc., but only such as are original and are founded in the creative powers of the mind.

In Pumpelly *v.* Green Bay Co. (13 Wall. 177), the court construes the word "taken" as used in the fifth amendment.

In the Dartmouth College Case (4 Wheat. 644), Chief Justice Marshall construes the word "contracts," in Article I, section 10, to include the charter of an educational institution.

But a practical construction should be given. The clause providing that no person shall be compelled in any criminal case to be a witness against himself should be construed, as it was doubtless designed, to effect a practical and beneficent purpose—not necessarily to protect witnesses against every possible detriment which might happen to them from their testimony, nor to unduly impede, hinder,

or obstruct the administration of criminal justice. The limitations and ample provisions of the Constitution should not be extended so far as to destroy the necessary powers of the States or prevent their efficient exercise.

In construing the fourteenth amendment, and holding that a Texas statute directed solely against railroad companies for permitting Johnson grass or Russian thistle to go to seed upon their right of way was not a clear violation of the equal protection clause, Justice Holmes said:

> Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.

Brown *v.* Walker, 161 U. S. 591.
See also—
Railroad Co. *v.* Peniston, 18 Wall. 31.
Missouri, etc., R. Co. *v.* May, 194 U. S. 270.

The rule that the contemporaneous construction of a statute by those charged with its execution should not be disregarded except for cogent reasons, and unless it be clear that such construction is erroneous, applies with even greater force in the construction of a provision of the Constitution long and continuously acted upon. Contemporary interpretation of the Constitution is of the most forcible nature, and entitled to great weight, and the practice and acquiescence under it for a period of years afford an irresistible answer to objection and fix the construction.

U. S. *v.* Midwest Oil Co., 236 U. S. 459.
The *Laura*, 114 U. S. 416.
Halter *v.* Nebraska, 205 U. S. 34.
Genessee Chief *v.* Fitzhugh, 12 How. 458.
Burrow-Giles Lith. Co. *v.* Sarony, 111 U. S. 57.
Stuart *v.* Laird, 1 Cranch 299.
Butte City Water Co. *v.* Baker, 196 U. S. 127.

Especially in cases of doubt, the solemn, deliberate, well-considered, and long-settled decisions of the judiciary, and the quiet assent of the people to an unbroken and unvarying practice, ought to conclude the action of courts in favor of a principle so established, even when the individual opinions of the judges would be different were the questions *res integra.*

Missouri *v.* Illinois, 180 U. S. 219.
Kilbourn *v.* Thompson, 103 U. S. 204.
McPherson *v.* Blacker, 146 U. S. 27.
Wilkinson *v.* Leland, 2 Pet. 657.
Cooley *v.* Philadelphia, 12 How. 315.
Veazie Bank *v.* Fenno, 8 Wall. 541.

Objects of the grant of power to the General Government.—When investigating the nature and extent of the powers conferred by the Constitution upon the General Government, it is indispensable to keep in view the objects for which these powers were granted. If the general purpose of the instrument is ascertained, the language of its provisions must be construed with reference to that purpose and

so as to subserve it. But the construction and application of a provision are not restricted by and to the purpose of its adoption. The fourteenth amendment is not limited to legislation touching members of the enfranchised race. The thirteenth amendment had its origin in the previous existence of African slavery. But the generality of its language makes its prohibition apply to slavery of white men as well as to that of black men; and also to serfage, vassalage, villenage, peonage, and every other form of compulsory labor. The provision of the Constitution prohibiting legislation by States impairing the obligation of contracts had its origin in the existence of tender laws, appraisement laws, stay laws, and installment laws passed by the States soon after the Revolution, when their finances were embarrassed and their people overwhelmed with debts. These laws prostrated all private credit and led to the adoption of the prohibition by which such legislation was forever prevented. But in its construction the provision has not been limited to mere commercial contracts.

Virginia *v.* Tennessee, 148 U. S. 519.
Railroad Tax Cases, 13 Fed. 740.
Brown *v.* Maryland, 12 Wheat. 437.
Gibbons *v.* Ogden, 9 Wheat. 187.
Packet Co. *v.* Keokuk, 95 U. S. 87.

In Prigg *v.* Pennsylvania (16 Pet. 610) the court said:

It will, indeed, probably be found, when we look to the character of the Constitution itself, the objects which it seeks to attain, the powers which it confers, the duties which it enjoins, and the rights which it secures, as well as the known historical fact that many of its provisions were matters of compromise of opposing interests and opinions, that no uniform rule of interpretation can be applied to it which may not allow, even if it does not positively demand, many modifications in its actual application to particular clauses. And, perhaps, the safest rule of interpretation after all will be found to be to look to the nature and objects of the particular powers, duties, and rights, with all the lights and aids of contemporary history; and to give to the words of each just such operation and force, consistent with their legitimate meaning, as may fairly secure and attain the ends proposed. * * * If by one mode of interpretation the right must become shadowy and unsubstantial, and without any remedial power adequate to the end, and by another mode it will attain its just end and secure its manifest purpose, it would seem, upon principles of reasoning, absolutely irresistible, that the latter ought to prevail.

Operation of Constitution.—The United States Constitution is supreme over all the departments of the National Government, and, to the extent of the powers delegated, over all who made themselves parties to it, States as well as persons; it is supreme over the people of the United States aggregately and in their separate sovereignties. It constitutes a part of the law of each State, and is binding upon the people and authorities of the State.

Dodge *v.* Woolsey, 18 How. 347.
National Bank *v.* Dearing, 91 U. S. 35.
Shreveport *v.* Cole, 129 U. S. 43.
Davis *v.* Burke, 179 U. S. 403.
Cooper *v.* Telfair, 4 Dall. 18.

To meet new conditions.—That the Constitution was adopted and is adapted to meet new conditions and circumstances, it was said in an early case by Justice Story:

The Constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter, and restrictions and specifications which at the present might seem salutary might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature from time to time to adopt its own means to effectuate legitimate objects and to mold and model the exercise of its powers as its own wisdom and the public interest should require.

Martin *v.* Hunter, 1 Wheat. 326.

And it has been further said:

The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now. Being a grant of powers to a government, its language is general, and as changes come in social and political life it embraces in its grasp all new conditions which are within the scope of the powers in terms conferred. In other words, while the powers granted do not change, they apply from generation to generation to all things to which they are in their nature applicable. This in no manner abridges the fact of its changeless nature and meaning. Those things which are within its grants of power, as those grants were understood when made, are still within them, and those things not within them remain still excluded.

South Carolina *v.* U. S., 199 U. S. 448.

See also—

Pensacola Tel. Co. *v.* Western Union, 96 U. S. 9.
In re Debs, 158 U. S. 591.

Historical origin.—The historical origin may be considered, and historical evidence may be resorted to as aids in the construction and application of words and provisions. What went before the adoption of the Constitution may be resorted to for the purpose of throwing light on its provisions. In placing a construction upon an article of doubtful meaning, the safe way is to read its language in connection with the known condition of affairs out of which the occasion for its adoption may have arisen, and then to construe it in a way, so far as is reasonably possible, to forward the known purpose or object for which it was adopted.

Twining *v.* New Jersey, 211 U. S. 78.
Marshall *v.* Gordon, 243 U. S. 521.
South Carolina *v.* U. S., 199 U. S. 457.
Williamson *v.* U. S., 207 U. S. 425.
Appleyard *v.* Massachusetts, 203 U. S. 222.
Missouri *v.* Illinois, 180 U. S. 219.
Kendall *v.* U. S., 12 Pet. 524.

Debates in Convention and Congress.—The views of the particular Members or the course of proceedings in the Convention can not control the fair meaning and general scope of the Constitution as it was finally framed, and what individual Senators or Representatives

may have urged in debate in regard to the meaning to be given to a proposed amendment does not furnish a firm ground for its construction, nor is it important as explanatory of the grounds upon which the Members voted in adopting it.

Legal Tender Cases, 12 Wall. 560; 110 U. S. 444.
Maxwell *v.* Dow, 176 U. S. 601.
See also—
U. S. *v.* Wong Kim Ark, 169 U. S. 699.
Watkins *v.* Holman, 16 Pet. 62.
Buchanan *v.* Litchfield, 102 U. S. 293.

In the case of Downes *v.* Bidwell (182 U. S. 254) the court said:

It is unnecessary to enter into the details of this debate. The arguments of individual legislators are no proper subjects for judicial comment. They are so often influenced by personal or political considerations or by the assumed necessities of the situation that they can hardly be considered even as the deliberate views of the persons who make them, much less as dictating the construction to be put upon the Constitution by the courts.

Contemporary legislation.—Legislation by Congress immediately following the adoption of the Constitution, and legislation enacted at the time of proposing or immediately following the proposal or adoption of an amendment, is authoritative in determining the scope of a constitutional provision, and is entitled to great weight. The first ten amendments to the Constitution were proposed by the First Congress of the United States, at its first session, on September 25, 1789. At the same session an act was passed "to regulate the collection of duties imposed by law on the tonnage of ships or vessels, and on goods, wares, and merchandise imported into the United States." The statute authorized the customs officials to seize and search for goods suspected of having been fraudulently entered or concealed. It can not be suggested with any force that the same Congress which proposed the amendments could have regarded the fourth and fifth amendments as forbidding the enactment of those or of kindred provisions. At the same session the judiciary act was passed. As an important legislative construction of the seventh amendment, guaranteeing the right of trial by jury in suits at common law, that a statute giving a summary judgment is consistent with it, the judiciary act provided that the court of the United States shall have power, in the trial of actions at law, to require the parties to produce books and papers in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if plaintiff shall fail to comply with such order it shall be lawful for the court to give judgment for the defendant as in case of nonsuit.

Waring *v.* Clarke, 5 How. 456.
Ames *v.* Kansas, 111 U. S. 469.

This rule can be relied upon only in cases of doubt, and before any appeal can be made to practical construction it must appear that the true meaning of a provision of the Constitution is not clear. No number of statutes, or infractions of the Constitution, however numerous, can be permitted to import a power which does not exist, or

to furnish a construction not warranted; long acquiescence of Congress and the Executive, by which the rights of parties have been determined and adjudged for many years, does not make constitutional that which is unconstitutional.

Fairbank *v.* U. S., 181 U. S. 307.
U. S. *v.* Boyer, 85 Fed. 425.
Field *v.* Clark, 143 U. S. 691.

The Federalist.—The Federalist is a collection of 85 essays, which were published in the newspapers immediately after the submission of the Constitution to the conventions of the several States. They were written by Hamilton, Madison, and Jay, suggesting the defects existing under the Confederation, and advocating the adoption of the Constitution. As in the case of other contemporaneous exposition, the construction given to the Constitution by the authors of the Federalist is entitled to great weight. But in applying their opinions to cases which may arise, a right to judge of their correctness must be retained.

McCulloch *v.* Maryland, 4 Wheat. 433.
Cohens *v.* Virginia, 6 Wheat. 418.
Pollock *v.* Farmers' Loan, etc., Co., 158 U. S. 627.

Meaning of words.—In construing the Constitution, the intention of the instrument is to prevail, and this intention is to be collected chiefly from its words understood in their ordinary sense; reference is to be had to the literal meaning of the words to be expounded, their connection with other words, and the general objects to be accomplished. Although the spirit of an instrument is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words; it can not be inferred from extrinsic circumstances that a case for which the words expressly provide shall be exempted from its operation. The argument of inconvenience can not prevail over plain words, but a construction which would necessarily occasion public or private mischief must yield to a construction which will occasion neither. A case within the words of a rule must be deemed within its operation unless something in the literal construction is so obviously absurd or mischievous, or so repugnant to the spirit of the instrument as to justify an exception.

Ogden *v.* Saunders, 12 Wheat. 332.
Houston *v.* Moore, 5 Wheat. 1.
Briscoe *v.* Bank of Kentucky, 11 Pet. 257.

No word or clause can be rejected as superfluous or meaningless, but each must be given its due force and appropriate meaning. Words in a constitution, as well as words in a statute, are always to be given the meaning they have in common use unless there are other strong reasons to the contrary. They are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged. Words and terms are to be taken in the sense in which they were used and understood at common law and at the time the Constitution and the amendments were adopted. Where any particular word or sentence is obscure or of doubtful meaning, taken by itself, its obscurity may be removed by comparing it with the words and

sentences with which it stands connected. Where the meaning is plain and clear, resort to collateral aids to interpretation is unnecessary and can not be indulged in to narrow or enlarge the text; but where there is ambiguity or doubt, or where two views may well be entertained, contemporaneous and subsequent practical construction is entitled to the greatest weight.

Knowlton *v.* Moore, 178 U. S. 87.
Tennessee *v.* Whitworth, 117 U. S. 147.
Pollock *v.* Farmers Loan etc., Co., 158 U. S. 618.
See also—
Holmes *v.* Jennison, 14 Pet. 571;
Virginia *v.* Tennessee, 148 U. S. 519, as to construction of "agreement" and "compact" in Art. I, sec. 10;
Hurtado *v.* California, 110 U. S. 534, as to construction of "due process of law" in the fifth and fourteenth amendments;
Jacobson *v.* Massachusetts, 197 U. S. 22, as to the spirit of the Constitution not justifying an attempt to control its words;
Locke *v.* New Orleans, 4 Wall. 172;
Wheaton *v.* Peters, 8 Pet. 661;
McCulloch *v.* Maryland, 4 Wheat. 414, as to construction of the words "necessary and proper" in Art. I, sec. 8, cl. 18, and "necessary" in Art. I, sec. 10;
Monongahela Nav. Co. *v.* U. S. 148 U. S. 327, as to construction of the words "just compensation" in the fifth amendment;
Munn *v.* Illinois, 94 U. S. 123, as to the use of the word "deprive" in the fourteenth amendment.

The Constitution is to be construed in the sense in which the words and terms used were understood by those who made and those who adopted it. The term "*ex post facto*," literally construed, would apply to any act operating upon a previous fact, yet it was understood at the time the Constitution was adopted, both in this country and in England, as embracing only criminal laws and laws providing for the recovery of penalties or forfeitures.

It is a familiar rule in the construction of terms to apply to them the meaning naturally attaching to them from their context. *Noscitur a sociis* is a rule of construction applicable to all written instruments.

The *Huntress*, 2 Ware (U. S.) 89.
Locke *v.* New Orleans, 4 Wall. 172.
Viriginia *v.* Tennessee, 148 U. S. 519.
Ex parte Bain, 121 U. S. 12.
Carpenter *v.* Pennsylvania, 17 How. 463.
Kendall *v.* U. S., 12 Pet. 524.

A general rule has been laid down that affirmative words are to be given a negative operation, but this rule can be applied, and a negative be implied from affirmative words, only where the implication promotes, not where it defeats, the obvious intention of an article. Every part of the article must be taken into view, and that construction adopted which will consist with its words and promote its general intention. In the case of the grant to the Supreme Court of original jurisdiction in certain cases, a negative or exclusive sense must be given or it has no operation, but in the grant of appellate jurisdiction, that jurisdiction may be exercised in every

case cognizable under Article III, in the Federal courts, in which original jurisdiction can not be exercised; and the extent of this judicial power is to be measured, not by giving the affirmative words of the distributive clause a negative operation in every possible case, but by giving their true meaning to the words which define its extent.

Cohens *v.* Virginia, 6 Wheat. 394.
Marbury *v.* Madison, 1 Cranch 174.

Powers reserved by the States.—The rule of construction governing reserved state powers is given by the court in Livingston *v.* Van Ingen, 9 Johns. (N. Y.) 507, in the following language:

When the people create a single, entire government, they grant at once all the rights of sovereignty. The powers granted are indefinite and incapable of enumeration. Everything is granted that is not expressly reserved in the constitutional charter, or necessarily retained as inherent in the people. But when a federal government is erected with only a portion of the sovereign power, the rule of construction is directly the reverse, and every power is reserved to the members that is not, either in express terms or by necessary implication, taken away from them, and vested exclusively in the federal head. This rule has not only been acknowledged by the most intelligent friends to the Constitution, but is plainly declared by the instrument itself. Congress have power to lay and collect taxes, duties, and excises, but as these powers are not given exclusively, the States have a concurrent jurisdiction, and retain the same absolute powers of taxation which they possessed before the adoption of the Constitution, except the power of laying an impost, which is expressly taken away. This very exception proves that, without it, the States would have retained the power of laying an impost; and it further implies, that in cases not excepted, the authority of the States remains unimpaired (p. 574).

Conflict between National and State laws.—It was held in Tarble's Case (13 Wall. 397), that whenever any conflict arises between the enactments of the National and State Governments, or in the enforcement of their asserted authorities, those of the National Government have supremacy until the validity of the different enactments and authorities are determined by the tribunals of the United States. The court said (p. 407):

This temporary supremacy until judicial decision by the national tribunals, and the ultimate determination of the conflict by such decision, are essential to the preservation of order and peace, and the avoidance of forcible collision between the two Governments.

In speaking of this conflict of authority in connection with State process in Ableman *v.* Booth (21 How. 506), and holding that the process of a State court or judge has no authority beyond the limits of the sovereignty which confers the judicial power, Chief Justice Taney said:

The Constitution was not formed merely to guard the States against danger from foreign nations, but mainly to secure union and harmony at home; for if this object could be attained, there would be but little danger from abroad; and to accomplish this purpose, it was felt by the statesmen who framed the Constitution, and by the people who adopted it, that it was necessary that many of the rights of sovereignty which the States then possessed should be ceded to the General Government; and that, in the sphere of action assigned to it, it should be supreme, and strong enough to execute its own laws by its own tribunals, without interruption from a State or from State authorities.

This language was quoted in substantiation of the opinion of the court by Mr. Justice Field in Tarble's Case, *supra.*

The seventh amendment applies only to proceedings in courts of the United States, and does not in any manner whatever govern or regulate trials by jury in State courts, or the standards which must be applied concerning the same.

Minneapolis, etc., R. Co. *v.* Bombolis, 241 U. S. 211.

The guaranty of equal privileges and immunities to citizens of the United States by the fourteenth amendment does not limit the power of the State government over the rights of its own citizens.

Holden *v.* Hardy, 46 Pac. 756, affirmed in 169 U. S. 366.

Effect of exceptions.—The exceptions from a power mark its extent, and an exception of any particular case presupposes that those which are not excepted are embraced within the grant or prohibition. Where no exception is made in terms, none will be made by mere implication or construction.

Gibbons *v.* Ogden, 9 Wheat. 191.
Brown *v.* Maryland, 12 Wheat. 438.

The rule that in the enforcement of provisions guaranteeing civil rights Congress is limited to the enactment of legislation corrective of any wrong committed by the States and not by the individuals, does not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such powers to the States, as in the regulation of commerce, the coining of money, the establishment of post offices and post roads, the declaring of war, etc. In such cases Congress has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof.

Civil Rights Cases, 109 U. S. 18.

Where a particular power has been granted to Congress and has never been expressly denied to the States, the States may exercise the power, in the absence of congressional legislation, on the principle that it is not the grant of power to Congress, but its actual exercise of that power, that makes its action exclusive. State legislation which conflicts with the acts of Congress is, of course, null and void, *ipso facto.*

Houston *v.* Moore, 5 Wheat. 49.

NOTES

ON THE

CONSTITUTION OF THE UNITED STATES OF AMERICA

NOTES ON THE CONSTITUTION.[1]

LEADING GENERAL CASES.

The cases cited below, under their respective headings, are considered leading cases and apply to the Constitution as a whole. They are all great outstanding cases, and are cited many times throughout these notes as also applying to particular clauses of the Constitution.

Nature of the Constitution

McCulloch *v.* Maryland, 4 Wheat. 316.
Barron *v.* Baltimore, 7 Pet. 243.
Twining *v.* New Jersey, 211 U. S. 78.
Slaughterhouse Cases, 16 Wall. 36.
U. S. *v.* Cruikshank, 92 U. S. 542.
Civil Rights Cases, 109 U. S. 3.
Rogers *v.* Alabama, 192 U. S. 226.

The Jurisdiction of the United States

Gibbons *v.* Ogden, 9 Wheat. 1.
McCulloch *v.* Maryland, 4 Wheat. 316.
Cohens *v.* Virginia, 6 Wheat. 264.
Hans *v.* Louisiana, 134 U. S. 1.
Texas *v.* White, 7 Wall. 700.
U. S. *v.* Texas, 143 U. S. 621.
Tennessee *v.* Davis, 100 U. S. 257.
Logan *v.* U. S., 144 U. S. 263.
Hepburn *v.* Ellzey, 2 Cranch 445.
Serè *v.* Pitot, 6 Cranch 332.
American Ins. Co. *v.* Canter, 1 Pet. 511.
Callan *v.* Wilson, 127 U. S. 540.
Mormon Church *v.* U. S., 136 U. S. 1.
Jones *v.* U. S., 137 U. S. 202.
In re Ross, 140 U. S. 453.
Fong Yue Ting *v.* U. S., 149 U. S. 698.

Relation of the States to the Federal Government

Lane County *v.* Oregon, 7 Wall. 71.
Martin *v.* Hunter, 1 Wheat. 304.
Tarble's Case, 13 Wall. 397.
Tennessee *v.* Davis, 100 U. S. 257.
Ex parte Siebold, 100 U. S. 371.
In re Neagle, 135 U. S. 1.
Hauenstein *v.* Lynham, 100 U. S. 483.
Davis *v.* Elmira Savings Bank, 161 U. S. 275.
Ex parte McNiel, 13 Wall. 240.
Collector *v.* Day, 11 Wall. 124.
Worcester *v.* Georgia, 6 Pet. 570.
Chinese Exclusion Case, 130 U. S. 604.
Burnes Natl. Bank. *v.* Duncan, 265 U. S. 17.

Checks and Balances in Government

Marbury *v.* Madison, 1 Cranch 137.
Chicago, &c., R. Co. *v.* Wellman, 143 U. S. 339.
Pollock *v.* Farmers' Loan, &c., Co., 158 U. S. 601.
Field *v.* Clark, 143 U. S. 649.

[1] The Constitution went into operation on the first Wednesday (4th day) of March, 1789. (Owings *v.* Speed, 5 Wheat. 420.)

PREAMBLE.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The People of the United States

The Constitution emanated from the people and was not the act of sovereign and independent States. The above phrase contemplates the body of electors composing the States, the terms "people" and "citizens" being synonymous. Negroes, whether free or slaves, were not included in the term "people of the United States" at that time.

Penhallow *v.* Doane, 3 Dall. 93.
Scott *v.* Sandford, 19 How. 404.
Martin *v.* Hunter, 1 Wheat. 324.
Chisholm *v.* Georgia, 2 Dall. 470.
McCulloch *v.* Maryland, 4 Wheat. 316.
Barron *v.* Baltimore, 7 Pet. 247.

To Form a More Perfect Union

The union of the States never was a purely artificial and arbitrary relation. By the Articles of Confederation, the Union was solemnly declared to be perpetual. And when these articles were found to be inadequate to the exigencies of the country, the Constitution was ordained "to form a more perfect Union."

Texas *v.* White, 7 Wall. 724.
U. S. *v.* Cruikshank, 92 U. S. 549.
White *v.* Hart, 13 Wall. 650.
Wharton *v.* Wise, 153 U. S. 167.
Martin *v.* Hunter, 1 Wheat. 332.
Legal Tender Cases, 12 Wall. 554.
Scott *v.* Sandford, 19 How. 404.

For the United States of America

The Government is established "for the United States of America" and not for countries outside of their limits. Where the Constitution has been once formally extended by Congress to Territories, neither Congress nor the Territorial legislature can enact laws inconsistent therewith.

In re Ross, 140 U. S. 464.
Downes *v.* Bidwell, 182 U. S. 251.

For the United States of America—Continued.

Alaska.—Under the treaty with Russia concerning Alaska it appears that Alaska is incorporated into and is a part of the United States, and the provisions of the Constitution are applicable to that Territory.

Rassmussen *v.* U. S., 197 U. S. 522.
Alaska *v.* Troy, 258 U. S. 101.

Cuba.—Not a part of the territory of the United States.

Neely *v.* Henkel, 180 U. S. 122.

Hawaiian Islands.—Mere annexation did not effect incorporation of the islands into the United States, and the provisions of the Constitution as to jury trials are not applicable to them. They are not foreign country within the meaning of the tariff laws.

Hawaii *v.* Mankichi, 190 U. S. 217.
Honolulu R. T. Co. *v.* Hawaii, 211 U. S. 282.
Goetze *v.* U. S., 182 U. S. 221.

Philippine Islands.—Previous to incorporating the islands into the United States the Constitution, by its own force and without legislation to that end, does not give the right to trial by common-law jury. They were held not to be foreign country within the meaning of the tariff laws.

Dorr *v.* U. S., 195 U. S. 138.
Fourteen Diamond Rings *v.* U. S., 183 U. S. 177.
Lincoln *v.* U. S., 197 U. S. 427.
Weems *v.* U. S., 217 U. S. 349.

The prohibition of double jeopardy, guaranteed by the fifth amendment, is applicable to all criminal prosecutions in the Philippine Islands.

Grafton *v.* U. S., 206 U. S. 333.
Kepner *v.* U. S., 195 U. S. 100.

In Serra *v.* Mortiga, 204 U. S. 470, will be found the bill of rights enacted by Congress for the Philippine Islands.

Porto Rico.—After the treaty with Spain and its cession to the United States, Porto Rico became a part of the United States but not within the revenue clauses of the Constitution. It is a *de facto* and *de jure* American territory; and ceased to be a foreign country after the cession of the island to the United States.

Downes *v.* Bidwell, 182 U. S. 263.
Ponce *v.* Church, 210 U. S. 296.
Dooley *v.* U. S., 182 U. S. 235.
Balzac *v.* Porto Rico, 258 U. S. 298.

Preamble as a Source of Substantive Power

No power to enact any statute is derived from the preamble. The Constitution is the only source of power authorizing action by any branch of the Federal Government.

Jacobson *v.* Massachusetts, 197 U. S. 22.
Dorr *v.* U. S., 195 U. S. 140.
Massachusetts *v.* Mellon, 262 U. S. 447.

A Government of Enumerated and Delegated Powers

The Government can claim no powers which are not granted by the Constitution. The powers are related to each other and are all means to a common end. There is no law of nations standing between the people of the United States and their Government.

Martin *v.* Hunter, 1 Wheat. 326.
Legal Tender Cases, 12 Wall. 532.
Scott *v.* Sandford, 19 How. 451.
McCulloch *v.* Maryland, 4 Wheat. 405.
South Carolina *v.* U. S., 199 U. S. 448.
Lottery Case, 188 U. S. 354.
U. S. *v.* Cruikshank, 92 U. S. 551.
Buttfield *v.* Stranahan, 192 U. S. 492.

Supremacy of National Government Within Its Sphere

The United States are a Nation whose powers of government, within the sphere of action confided to it by the Constitution, are supreme and paramount. The powers of the Government are limited in number but not in degree.

In re Quarles, 158 U. S. 535.
Dobbins *v.* Erie County, 16 Pet. 447.
U. S. *v.* Cruikshank, 92 U. S. 550.
Cohens *v.* Virginia, 6 Wheat. 381.
McCulloch *v.* Maryland, 4 Wheat. 406.
Pacific Ins. Co. *v.* Soule, 7 Wall. 444.
In re Debs, 158 U. S. 582.
Kohl *v.* U. S., 91 U. S. 372.

Express and Implied Powers

In construing the Constitution that which is implied is as much a part of the instrument as that which is expressed.

Ex parte Yarbrough, 110 U. S. 658.
Legal Tender Cases, 12 Wall. 534.
U. S. *v.* Marigold, 9 How. 568.

Among those matters which are implied, though not expressed, is that the Nation may not, in the exercise of its powers, prevent a State from discharging the ordinary functions of government.

It is not necessary, however, in order to prove the existence of a particular authority, to show a particular and express grant.

South Carolina *v.* U. S., 199 U. S. 451.
Hepburn *v.* Griswold, 8 Wall. 613.
Legal Tender Cases, 12 Wall. 534.

Distribution of Powers Among Departments

The Constitution is supreme over all the departments of the Government; anything which may be done unauthorized by it is unlawful. No department of the Government has any other powers than those delegated to it by the people. As a general rule the powers confined by the Constitution to one department can not be exercised by another.

Dodge *v.* Woolsey, 18 How. 347.
Hepburn *v.* Griswold, 8 Wall. 611.
Kilbourn *v.* Thompson, 103 U. S. 190.

Of General Application

In connection with the preamble and as of general application and interest see also—

Brown *v.* Maryland, 12 Wheat. 419.
Claflin *v.* Houseman, 93 U. S. 130.
Williams *v.* Bruffy, 96 U. S. 176.
Langford *v.* U. S. 101 U. S. 341.
U. S. *v.* Jones, 109 U. S. 513.
Fort Leavenworth R. Co. *v.* Lowe, 114 U. S. 525.
Logan *v.* U. S., 144 U. S. 263.
Fong Yue Ting *v.* U. S., 149 U. S. 698.
U. S. *v.* Knight, 156 U. S. 1.
Mattox *v.* U. S., 156 U. S. 237.

ARTICLE I

LEGISLATIVE DEPARTMENT

ARTICLE I.—LEGISLATIVE DEPARTMENT.

Section 1.—THE CONGRESS.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Legislative Power in General

The provision "All legislative powers herein granted shall be vested in a Congress" means that Congress, "within the limits of its powers, and observing the restrictions imposed by the Constitution, may in its discretion enact any statute appropriate to accomplish the objects for which the National Government was established."

Burton *v.* U. S., 202 U. S. 344.

A Congress of the United States

A joint resolution of Congress suspending the execution of a certain act previously passed in the same session "until the further order of Congress," refers generally to "A Congress of the United States," and does not intend the suspension during the existence of that session of Congress only.

Levey *v.* Stockslager, 129 U. S. 475.

Powers of Houses of Congress Acting Separately

Neither branch of Congress when acting separately can lawfully exercise more power than is conferred by the Constitution on the whole body, except in the few instances where authority is conferred on either House separately, as in the case of impeachments.

Kilbourn *v.* Thompson, 103 U. S. 168.

See also—

U. S. *v.* Nashville, etc., R. Co., 217 Fed. 254, as to a resolution of the Senate not concurred in by the House.

Power of Investigation

The powers of Congress in respect to investigation and legislation are not absolutely identical, but the power of investigation is the wider and extends to matters on which it could not constitutionally legislate directly, if they are reasonably calculated to afford information useful and material in the framing of constitutional legislation.

I. C. C. *v.* Harriman, 157 Fed. 432, order modified in Harriman *v.* I. C. C., 211 U. S. 407.

Kilbourn *v.* Thompson, 103 U. S. 168.

In re Pacific Ry. Comm., 32 Fed. 241.

Power to Punish for Contempt

Although the House can punish its own Members for disorderly conduct, or for failure to attend its sessions, and can decide cases of contested elections, etc., and may, where the examination of witnesses is necessary to the performance of its duties, fine or imprison a contumacious witness, there is not found in the Constitution any general power vested in either House to punish for contempt.

Kilbourn *v.* Thompson, 103 U. S. 168, overruling Anderson *v.* Dunn, 6 Wheat. 204.

Delegation of Legislative Power

In General

It is within the power of Congress to vest in executive officers the power to make necessary rules and regulations to enforce the provisions of a law, but this is not deemed to extend to the making of rules to subvert the statute.

Field *v.* Clark, 143 U. S. 649.
U. S. *v.* Grimaud, 220 U. S. 506.
Morrill *v.* Jones, 106 U. S. 466.
U. S. *v.* Eaton, 144 U. S. 677.
Caha *v.* U. S., 152 U. S. 211.
In re Kollock, 165 U. S. 526.
Buttfield *v.* Stranahan, 192 U. S. 470.
U. S. *v.* United Copper Co., 196 U. S. 207.
Union Brdg. Co. *v.* U. S., 204 U. S. 364.
Williamson *v.* U. S., 207 U. S. 425.
American Sugar Ref. Co. *v.* U. S., 211 U. S. 155.
U. S. *v.* Antikamnia Co., 231 U. S. 654.
Mutual Film Corp. *v.* Ohio, 236 U. S. 230.
Oceanic Nav. Co. *v.* Stranahan, 214 U. S. 320.
Wichita R. Co. *v.* Kansas, 260 U. S. 48.

Congress may make the revival of a law conditioned upon a fact then contingent, and empower the President to declare by proclamation that such fact has occurred, and the law is revived.

The *Aurora v.* U. S., 7 Cranch 382.

Congress can not delegate its power to make laws to an executive department or to an administrative officer, nor does the power delegated to such department or officer carry with it the authority to repeal, extend, or modify an act of Congress.

Morrill *v.* Jones, 106 U. S. 466.

To the Judiciary

Congress has the power to delegate to the Federal courts the power of making and altering the modes of proceedings in suits.

Wayman *v.* Southard, 10 Wheat. 42.
U. S. Bank v. Halstead, 10 Wheat. 51.
In re Chapman, 166 U. S. 661.
Standard Oil Co. *v.* U. S., 221 U. S. 1.

To Interstate Commerce Commission

The commission is not and can not be invested, under the Constitution, with legislative power. "Congress has laid down general rules for the guidance of the commission, leaving to it merely the carrying out of details in the exercise of the power

so conferred. This, we think, is not a delegation of legislative authority."

I. C. C. *v.* Cincinnati, etc., R. Co., 76 Fed. 183, affirmed in 167 U. S. 479.
Kansas City Sou. R. Co. *v.* U. S., 231 U. S. 423.
See also—
Texas, etc., R. Co. *v.* I. C. C., 162 U. S. 197.
Intermountain Rate Cases, 234 U. S. 476.
St. Louis, etc., R. Co. *v.* Taylor, 210 U. S. 281.
Missouri Pac. R. Co. *v.* Larabee, 211 U. S. 612.
I. C. C. *v.* Goodrich Trans. Co., 224 U. S. 194.
The Shreveport Case, 234 U. S. 342.
I. C. C. *v.* Louisville, etc., R. Co., 227 U. S. 88.

As to power delegated to the President and the commission under the Federal control act, see—

Northern Pac. R. Co. *v.* North Dakota, 250 U. S. 135.[1]

To the Federal Reserve Board

The provision of the act of Congress establishing the Federal Reserve Board giving to that board authority to grant to national banks the right to act as fiduciary is not invalid as conferring legislative power on the board.

First Nat. Bank *v.* Union Trust Co., 244 U. S. 416.

To the Federal Power Commission

Federal Water Power Act held not unconstitutional as delegation of legislative powers. Congress can delegate right of eminent domain to a Federal agency.

Alabama Power Co. *v.* Gulf Power Co., 283 Fed. 606.

In Connection With

Construction or removal of bridges.—The act of Congress authorizing the erection of a bridge is not invalid for providing "That the Secretary of War is hereby authorized and directed, upon receiving said plan and map and other information, and upon being satisfied that a bridge built on such a plan and at said locality will conform to the prescribed conditions of this act, not to obstruct, impair, or injuriously modify the navigation of said river, to notify the said company that he approves the same; and upon receiving such notification the said company may proceed to the erection of said bridge, conforming strictly to the approved plan and location."

Miller *v.* New York, 109 U. S. 393.
See also—
Monongahela Brdg. Co. *v.* U. S., 216 U. S. 177.
Union Brdg. Co. *v.* U. S., 204 U. S. 364.
Hannibal Brdg. Co. *v.* U. S., 221 U. S. 194.
Rider *v.* U. S., 178 U. S. 251.

Tariff laws and regulations.—The act of October 1, 1890, section 3, authorizing the President to suspend "for such time as he shall deem just" the provisions of that act allowing the free importation of certain commodities as to any countries which impose upon the products of the United States duties which he "may deem to be reciprocally unequal and unjust," can not be considered a delegation of legislative or treaty-making power, especially in view of the fact that from the foundation of the

[1] See also same subject, p. 92.

Government Congress has frequently invested the President with similar discretion.

Field *v.* Clark, 143 U. S. 649.
See also—
Buttfield *v.* Stranahan, 192 U. S. 470.
Cruikshank *v.* Bidwell, 86 Fed. 7.
Nicholas & Co. *v.* U. S., 249 U. S. 34.

The government of the Philippines.—Congress in dealing with the Philippine Islands may delegate legislative authority to such agencies as it may select.

U. S. *v.* Heinszen, 206 U. S. 370.
Dorr *v.* U. S., 195 U. S. 138.

The regulation of forest reserves.—Legislative power was not unconstitutionally delegated to the Secretary of Agriculture by act authorizing him to make rules and regulations covering forest reservations and making violations thereof a crime.

U. S. *v.* Grimaud, 220 U. S. 506.
See also—
Light *v.* U. S., 220 U. S. 523.
Dastervignes *v.* U. S., 122 Fed. 30.
U. S. *v.* Rizzinelli, 182 Fed. 675.
Contra—U. S. *v.* Blasingame, 116 Fed. 654.

Location of mining claims.—Supplementary regulations concerning the location of mining claims, prescribed by a State in addition to the congressional regulations, are not invalid on the theory that they were enacted in the exercise of an unlawful delegation by Congress of legislative power.

Butte City Water Co. *v.* Baker, 196 U. S. 119.

The bankruptcy act.—The recognition of the local law by the bankruptcy act in the matter of exemptions, dower, etc., does not render the act void as an attempt by Congress unlawfully to delegate its legislative power.

Hanover Nat. Bank *v.* Moyses, 186 U. S. 181.

Sale of naval vessels.—Under act of March 3, 1883, providing for the sale of naval vessels, and stating that no vessel shall be sold in any other manner than therein provided or for less than the appraised value, unless the President of the United States shall otherwise direct in writing, the power of the President to direct a departure from the statute is not confined to a sale for less than the appraised value, but extends to the manner of sale.

Levinson *v.* U. S., 258 U. S. 198.

Deportation of aliens.—The alien act of May 10, 1920, establishes classes of persons who in the judgment of Congress are eligible for deportation and directs the Secretary of Labor to deport those whom he finds to be undesirable. Held not invalid as a delegation of legislative power since the discretion delegated is sufficiently defined by the policy of Congress and the common understanding as to what "undesirable residents" are.

Mahler *v.* Eby, 264 U. S. 32.
Tisi *v.* Tod, 264 U. S. 131.

Encroachment by Executive and Judiciary on Legislative Power

One of the separate departments of the Government may not usurp powers committed by the Constitution to another depart-

ment. The President has no constitutional power to repeal an act of Congress.

Mugler *v.* Kansas, 123 U. S. 623.
Confiscation Cases, 20 Wall. 92.
See also—
Sinking-Fund Cases, 99 U. S. 718.
Calder *v.* Bull, 3 Dall. 386.
Cooper *v.* Telfair, 4 Dall. 19.
McCracken *v.* Hayward, 2 How. 608.
Wisconsin *v.* Duluth, 96 U. S. 379.
Whitney *v.* Robertson, 124 U. S. 190.
Botiller *v.* Dominguez, 130 U. S. 238.
Chinese Exclusion Case, 130 U. S. 581.
Northern Securities Co. *v.* U. S., 193 U. S. 197.

Only for impelling reasons will courts inquire of executive department as to status of foreign government. Recognition of foreign government's sovereignty by political branch of the Government binds courts.

Russian Government *v.* Lehigh Valley R. Co., 293 Fed. 133.

Encroachment on Judicial and Executive Power by Congress

In Stuart *v.* Laird, 1 Cranch, 308, it was said:

> Congress have constitutional authority to establish, from time to time, such inferior tribunals as they may think proper; and to transfer a cause from one such tribunal to another. In this last particular, there are no words in the Constitution to prohibit or restrain the exercise of legislative power.

See also—
Blake *v.* U. S., 103 U. S. 236.
Crenshaw *v.* U. S., 134 U. S. 99.
Shoemaker *v.* U. S., 147 U. S. 282.
Hayburn's case, 2 Dall. 409, note.
Kilbourn *v.* Thompson, 103 U. S. 168.
Gordon *v.* U. S., 117 U. S. 705.

Decision of administrative officer within conferred powers is not subject to review by courts.

Silberschein *v.* U. S., 285 Fed. 397.

Power to Pass Retrospective Statutes

Many retrospective statutes have been passed by Congress, and whenever their power to do so has been questioned, it has been sustained.

U. S. *v.* Schooner *Peggy*, 1 Cranch 103.
Sampeyreac *v.* U. S., 7 Pet. 222.
Prize cases, 2 Black 671.
Union Pac. R. Co. *v.* Snow, 231 U. S. 204.
Johannessen *v.* U. S., 225 U. S. 227.

Of General Application

As of general application and interest in connection with this section, see—

McCulloch *v.* Maryland, 4 Wheat. 412.
Dodge *v.* Woolsey, 18 How. 349.
Ex parte Clarke, 100 U. S. 421.
U. S. *v.* Harris, 106 U. S. 629.
In re Neagle, 135 U. S. 1.
Muskrat *v.* U. S., 219 U. S. 346.

Section 2.—HOUSE OF REPRESENTATIVES.

Clause 1.—COMPOSITION OF.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.[1]

Right to Vote

The right to vote for Members of Congress is not derived from the Constitution and laws of the State in which they are chosen, but has its foundation in the Federal Constitution.

Ex parte Yarbrough, 110 U. S. 651.
Wiley *v.* Sinkler, 179 U. S. 62.
Swafford *v.* Templeton, 185 U. S. 487.
In re Green, 134 U. S. 377.
Minor *v.* Happersett, 21 Wall. 171.

Qualifications of Voters

The State can not prescribe the qualifications of voters for Members of Congress; the Constitution merely adopts the qualifications furnished by the States as the qualifications of its own electors for the popular branch of their legislatures.

Ex parte Yarbrough, 110 U. S. 651.

The provision as to qualifications of electors does not make the statutes and constitutional provisions of the various States parts of the Constitution and laws of the United States.

Shoshone Min. Co. *v.* Rutter, 177 U. S. 505.
U. S. *v.* Mosley, 238 U. S. 383.

Clause 2.—QUALIFICATIONS OF MEMBERS.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

The term "State" is used in this clause in its geographical sense and not in the sense of a political community.

Texas *v.* White, 7 Wall. 721.
Boyd *v.* Nebraska, 143 U. S. 135.
U. S. *v.* Wong Kim Ark, 169 U. S. 649.

[1] See Art. VI, Cl. 3, p. 556, for oath of office.

Sec. 2.—House of Representatives.

Clause 3.—APPORTIONMENT.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons.][2] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Apportioned Among the States

Representatives

Power to apportion Representatives after this enumeration is made is nowhere found among the express powers given to Congress, but it has always been acted upon as irresistibly flowing from the duty positively enjoined by the Constitution.

Prigg *v.* Pennsylvania, 16 Pet. 619.

Direct Taxes[3]

In Knowlton *v.* Moore (178 U. S. 89) the court said that the requirement that direct taxes should be apportioned among the several States "contemplated the protection of the States, to prevent their being called upon to contribute more than was deemed their due share of the burden."

The first case to come before the Supreme Court involving an interpretation of the term "direct tax" was Hylton *v.* U. S. (3 Dall. 171). In that case the act of Congress imposing a tax upon carriages kept only for pleasure and not for profit was held

[2] The part of this clause inclosed in brackets was amended, as to the mode of apportionment of Representatives among the several States, by the fourteenth amendment, section 2, p. 741, and as to taxes on incomes without apportionment, by the sixteenth amendment, p. 745.

[3] See also Article I, section 9, clause 4, p. 263

unconstitutional because it was a direct tax not apportioned among the several States.

See also—

Pacific Ins. Co. *v.* Soule, 7 Wall. 444.
Scholey *v.* Rew, 23 Wall. 347.
Springer *v.* U. S., 102 U. S. 595.
De Treville *v.* Smalls, 98 U. S. 527.
High *v.* Coyne, 178 U. S. 11.
Murdock *v.* Ward, 178 U. S. 143.
Stratton's Independence *v.* Howbert, 231 U. S. 399.
Loughborough *v.* Blake, 5 Wheat. 317.
Veazie Bank *v.* Fenno, 8 Wall. 533.
Dodge *v.* Woolsey, 18 How. 351.
Pollock *v.* Farmers Loan, etc., Co., 157 U. S. 429; 158 U. S. 601.
Nicol *v.* Ames, 173 U. S. 509.
Patton *v.* Brady, 184 U. S. 608.
Thomas *v.* U. S., 192 U. S. 363.
Spreckels *v.* McClain, 192 U. S. 397.
Corporation Tax Cases, 220 U. S. 107.
Eisner *v.* Macomber, 252 U. S. 189.
New York Trust Co. *v.* Eisner, 256 U. S. 345.

Census—Enumeration

Under the authority merely to make an enumeration by persons in the States and Territories, Congress may compile statistics regarding the people.

Legal Tender Cases, 12 Wall. 536.

Of General Application

In connection with this clause and as applying generally, see also—

U. S. *v.* Kagama, 118 U. S. 375.
Elk *v.* Wilkins, 112 U. S. 94.
McPherson *v.* Blacker, 146 U. S. 1.
Downes *v.* Bidwell, 182 U. S. 244.
Rainey *v.* U. S., 232 U. S. 310.
Scott *v.* Sandford, 19 How. 393.
Gibbons *v.* District of Columbia, 116 U. S. 404.

Clause 4.—VACANCIES.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Clause 5.—IMPEACHMENT.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

The House of Representatives has the sole right to impeach officers of the Government, and the Senate to try them.

Kilbourn *v.* Thompson, 103 U. S. 190.

Section 3.—SENATE.

Clause 1.—COMPOSITION OF.

[The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one vote.][1]

Clause 2.—CLASSIFICATION.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies].[1]

Clause 3.—QUALIFICATIONS.

No Person shall be a Senator who shall not have attained to the Age of thirty years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.[2]

Clause 4.—PRESIDING OFFICER.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

Clause 5.—OTHER OFFICERS.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

Clause 6.—IMPEACHMENT TRIALS.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

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[1] The parts included in brackets were superseded by Amendment 17, p. 746.
[2] See Art. VI, Cl. 3, p. 556, for oath of office.

Sec. 3.—Senate.

Clause 7.—IMPEACHMENT JUDGMENTS.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Liability of Government for Tort

The maxim of the English constitutional law that the King can do no wrong does not apply to our system of government.

Langford *v.* U. S., 101 U. S. 342.

Power to Subpœna Witnesses

Either House may subpœna witnesses in impeachment cases.

Kilbourn *v.* Thompson, 103 U. S. 190.
Legal Tender cases, 12 Wall. 535.

Section 4.—ELECTIONS AND MEETINGS.

Clause 1.—ELECTIONS.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Shall Be Prescribed in Each State by the Legislature

Nothing in the act of Congress of August 8, 1911 (37 Stat. 13), apportioning representation among the States, prevents the people of a State from reserving a right of approval or disapproval by referendum of a State act redistricting the State for the purpose of congressional elections.

Davis *v.* Ohio, 241 U. S. 565.

Power of Congress over Elections

The Federal corrupt practices act, which undertakes to limit the amount of money which any candidate for Congress may give, expend, use, etc., in procuring his nomination or election, held unconstitutional as applied to a primary election of candidates for a seat in the Senate.

Newberry *v.* U. S., 256 U. S. 232.
See also—
U. S. *v.* Gradwell, 243 U. S. 476.
Ex parte Siebold, 100 U. S. 371.
U. S. *v.* Gale, 109 U. S. 65.
Ex parte Yarbrough, 110 U. S. 661.
U. S. *v.* Waddell, 112 U. S. 76.
U. S. *v.* Mosley, 238 U. S. 383.
In re Coy, 127 U. S. 752.

Sec. 4.—Elections and Meetings.

Clause 2.—MEETINGS.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5.—LEGISLATIVE PROCEEDINGS.

Clause 1.—ORGANIZATION OF CONGRESS.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House is by the Constitution made the judge of the election and qualification of its members. In deciding on these it has an undoubted right to examine witnesses and inspect papers, subject to the usual rights of witnesses in such cases; and it may be that a witness would be subject to like punishment at the hands of the body engaged in trying a contested election, for refusing to testify, that he would if the case were pending before a court of judicature.

Kilbourn *v.* Thompson, 103 U. S. 190.
In re Loney, 134 U. S. 372.
U. S. *v.* Ballin, 144 U. S. 1.
Burton *v.* U. S., 202 U. S. 344.

Clause 2.—RULES.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Rules of Its Proceedings

In U. S. v. Ballin (144 U. S. 1), which involved the quorum rule of the House of Representatives, the court said:

The Constitution empowers each House to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just. * * * The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.

Disorderly Behavior

It was held in Kilbourn *v.* Thompson (103 U. S. 168) that although the House can punish its own Members for disorderly conduct, or for failure to attend its sessions, and may, where the examination of witnesses is necessary to the performance of its duties, fine or imprison a contumacious witness, there is not found in the Constitution any general power vested in either House to punish for contempt.

Power of Congress over Members

Congress has power to make it an offense against the United States for any Member of Congress to receive or agree to receive compensation for services before a department of the Government in relation to matters in which the United States is interested, and the exercise of such power does not interfere with the legitimate authority of the Houses of Congress over their respective Members.

Burton *v.* U. S., 202 U. S., 344.

Of General Application

In connection with this clause and as of general interest, see—

In re Chapman, 166 U. S. 661.
Anderson *v.* Dunn, 6 Wheat. 204.

Clause 3.—JOURNAL.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Conclusiveness of Journal Entries

If the Journal of either House may be considered evidence for the purpose of determining whether the yeas and nays were ordered, and what the vote was on any particular question, the Journal must be presumed to show the truth, and a statement therein that a quorum was present, though not disclosed by the yeas and nays, is final.

U. S. *v.* Ballin, 144 U. S. 1.

Omission of Section of Bill

When an enrolled bill, signed by the presiding officers of both Houses of Congress and by the President, is placed in the custody of the Secretary of State, its authentication as a law is complete, and no reference can be had to the Journal of either House or other extrinsic evidence to show that a section of the bill, as actually passed, has been omitted.

Field *v.* Clark, 143 U. S. 649.

Of General Application

See also, as of general interest in connection with these clauses—

Wilkes County *v.* Coler, 180 U. S. 506.
South Ottawa *v.* Perkins, 94 U. S. 260.
La Abra Mining Co. *v.* U. S., 175 U. S. 423.

Clause 4.—ADJOURNMENT.[1]

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6.—RIGHTS OF MEMBERS.

Clause 1.—COMPENSATION, ETC.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their Respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Compensation for Their Services

A Member of Congress who receives his certificate of admission, and is seated, is *prima facie* entitled to the seat and to the salary.

Page *v.* U. S., 127 U. S. 67.
Shelley *v.* U. S., 19 Ct. Cl. 653.
Wilson *v.* U. S., 44 Ct. Cl. 428.

Privileged from Arrest

The term "treason, felony and breach of the peace," as used in this section, excepts from the operation of the privilege all criminal cases.

Williamson *v.* U. S., 207 U. S. 425. But see U. S. *v.* Cooper, 4 Dall. 341, in which it was said that there is no privilege to exempt Members of Congress from the service, or the obligation, of a subpœna in criminal cases.

See also—
Prigg *v.* Pennsylvania, 16 Pet. 619.
Burton *v.* U. S., 196 U. S. 295.
Bolton *v.* Martin, 1 Dall. 296.
U. S. *v.* Kirby, 7 Wall. 486.
Coxe *v.* McClenachan, 3 Dall. 478.

[1] There have been no cases of importance decided under this clause.

Speech or Debates

The protection of this clause is not limited to spoken words but is applicable to written reports, resolutions, voting, etc.

Kilbourn *v.* Thompson, 103 U. S. 204.
Anderson *v.* Dunn, 6 Wheat. 215.

Clause 2.—HOLDING OTHER OFFICE.[1]

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7.—BILLS AND RESOLUTIONS.

Clause 1.—REVENUE BILLS.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

All Bills for Raising Revenue

The construction of this limitation is practically settled by the uniform action of Congress confining it to bills to levy taxes in the strict sense of the word, and it has not been understood to extend to bills for purposes which incidentally create revenue.

U. S. *v.* Norton, 91 U. S. 566.
Twin City Bank *v.* Nebeker, 167 U. S. 196.
Millard *v.* Roberts, 202 U. S. 429.

Senate May Propose or Concur in Amendments

It has been held that the Senate may amend revenue bills and even change the plan under which taxes are laid, and such action is not invalid if the amendments are concurred in by the House.

Corporation Tax Cases, 220 U. S. 107.
Rainey *v.* U. S., 232 U. S. 310.
Kilbourn *v.* Thompson, 103 U. S. 168.
Field *v.* Clark, 143 U. S. 649.
U. S. *v.* Hill, 123 U. S. 681.

Clause 2.—VETO OF BILLS.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it,

[1] There have been no cases of importance decided under this clause.

with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Clause 3.—VETO OF RESOLUTIONS, ETC.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

When a Bill Becomes a Law

A bill, containing no effective date, becomes a law at the time it is signed by the President, if so signed within ten days after proper presentation to him. At the expiration of ten days, if he has not returned it to the House in which it originated, it becomes a law without his signature. If returned within ten days with objections, it does not become a law until reenacted by two-thirds of both Houses.

Gardner *v.* The Collector (6 Wall. 506), in which the court said:

The only duty required of the President by the Constitution in regard to a bill which he approves is, that he shall sign it. Nothing more. The simple signing his name at the appropriate place is the one act which the

Constitution requires of him as the evidence of his approval, and upon his performance of this act the bill becomes a law.

See also—

Lapeyre *v.* U. S., 17 Wall. 191.
Matthews *v.* Zane, 7 Wheat. 164.
Arnold *v.* U. S., 9 Cranch 104.
Field *v.* Clark, 143 U. S. 649.
Burgess *v.* Salmon, 97 U. S. 381.
U. S. *v.* Green, 138 U. S. 293.
U. S. *v.* Heth, 3 Cranch 399.
U. S. *v.* Burr, 159 U. S. 78.
Auffm'ordt *v.* Rasin, 102 U. S. 622.
Jones *v.* U. S., 137 U. S. 216.

Approval of Bills after Adjournment or During Recess

A bill signed by the President while Congress is in recess for a fixed time is not invalid. La Abra Mining Co. *v.* U. S. (175 U. S. 453), in which the court said:

As the Constitution, while authorizing the President to perform certain functions of a limited number that are legislative in their general nature, does not restrict the exercise of those functions to the particular days on which the two Houses of Congress are actually sitting in the transaction of public business, the court cannot impose such a restriction upon the Executive.

Approval by the President of Constitutional Amendments

It was held in Hollingsworth *v.* Virginia (3 Dall. 378) that an amendment to the Constitution need not be presented to the President for his approval.

Of General Application

As of general interest and application to Section 7 of Article I of the Constitution, see—

Kilbourn *v.* Thompson, 103 U. S. 168.
U. S. *v.* Hill, 123 U. S. 681.
McCulloch *v.* Maryland, 4 Wheat. 316.
Holy Trinity Church *v.* U. S., 143 U. S. 457.
Lyons *v.* Woods, 153 U. S. 649.
Missouri Pac. R. Co. *v.* Kansas, 248 U. S. 276.
Levey *v.* Stockslager, 129 U. S. 470.
Fourteen Diamond Rings *v.* U. S., 183 U. S. 176.

Section 8.—POWERS OF CONGRESS.

Clause 1.—TAXATION.[1]

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

[1] See also Amendment 16, "Income tax," p. 745.

Leading Cases

In what is considered one of the leading cases under this clause, the court said:

> Of all the powers conferred upon government that of taxation is most liable to abuse. Given a purpose or object for which taxation may be lawfully used, and the extent of its exercise is in its very nature unlimited. It is true that express limitation on the amount of tax to be levied or the things to be taxed may be imposed by constitution or statute, but in most instances for which taxes are levied, as the support of government, the prosecution of war, the national defense, any limitation is unsafe. The entire resources of the people should in some instances be at the disposal of the government. The power to tax is, therefore, the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people.
>
> Loan Association *v.* Topeka, 20 Wall. 663.

In McCulloch *v.* Maryland (4 Wheat. 316), involving the power of Congress to charter a bank, and the question of whether the legislature of Maryland could pass a law taxing a branch of the bank located within the State without violating the Federal Constitution, the court held that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government; that the States were not deprived of resources which they originally possessed; that they could lay a tax upon the real property of the bank, in common with other real property within the State; that they could also impose a tax on the interest which the citizens of Maryland might hold in the bank in common with other property of the same description throughout the State; but that a State has no power to tax an agency of the General Government, for "the power to tax involves the power to destroy."

(For an exhaustive and philosophical discussion of the principle on which the right of taxation is founded, see President Monroe's message to Congress of May 4, 1822.)

See also—

Osborn *v.* U. S. Bank, 9 Wheat. 738.
Weston *v.* Charleston, 2 Pet. 449.
Veazie Bank *v.* Fenno, 8 Wall. 533.
The Collector *v.* Day, 11 Wall. 113.
Thompson *v.* Union Pac. R. Co., 9 Wall. 579.
Railroad Co. *v.* Peniston, 18 Wall. 5.
Bank *v.* Supervisors, 7 Wall. 26.
Hibernia Soc. *v.* San Francisco, 200 U. S. 310.
State Tax on Foreign-held Bonds, 15 Wall. 300.
Kirtland *v.* Hotchkiss, 100 U. S. 491.
Savings & Loan Soc. *v.* Multnomah County, 169 U. S. 421.
U. S. *v.* Railroad Co., 17 Wall. 322.
California *v.* Central, etc., R. Co., 127 U. S. 1.
Bank of Commerce *v.* New York City, 2 Black 620.
Wisconsin, etc., R. Co. *v.* Price County, 133 U. S. 496.
Kentucky Railroad Tax Cases, 115 U. S. 321.
Pollock *v.* Farmers' Loan, etc., Co., 157 U. S. 429; 158 U. S. 601.

General Power of Taxation

The general power is given to Congress to lay and collect taxes of every kind and nature without any restraint, except on exports; but two rules are prescribed for their government, namely, uniformity and apportionment—duties, imposts, and excises by the first rule and capitation or other direct taxes by the second rule.

Hylton *v.* U. S., 3 Dall. 174.
U. S. *v.* Singer, 15 Wall. 111.

Construction of Grant

The words in a grant of power are to be taken in their natural and obvious sense, keeping always in view the objects for which the Constitution was made, and when the general purpose of the grant is ascertained, the language is to be construed, as far as possible, as subservient to that purpose. The powers granted to Congress are to be exercised with discretion, but the existence of a power can not be denied merely because it may be abused in its exercise; nor should it be presumed that abuses will take place, nor does the question of power depend upon the degree to which it may be exercised. The fact that compliance with the Constitution will lead to the abandonment of a certain recognized mode of taxation can not influence the determination of a question of power.

Martin *v.* Hunter, 1 Wheat. 304.
Legal Tender Cases, 12 Wall. 457.
Brown *v.* Maryland, 12 Wheat. 437.
Powell *v.* Pennsylvania, 127 U. S. 686.
In re Rapier, 143 U. S. 135.
Pollock *v.* Farmers Loan, etc., Co., 158 U. S. 633.
See also—
I. C. C. *v.* Brimson, 154 U. S. 486.
Wayman *v.* Southard, 10 Wheat. 50.
Fletcher *v.* Peck, 6 Cranch 135.
Satterlee *v.* Matthewson, 2 Pet. 413.
Calder *v.* Bull, 3 Dall. 388.

Definition of Taxes

A tax is a rate or sum of money assessed on the person or property of a citizen by the Government for the use of the Nation or State; a charge for the support of Government, to raise money for public purposes. The obligation to pay taxes rests, not upon the privileges enjoyed or the protection given to a citizen, but upon the necessity of money for the support of Government, but the citizen receives compensation therefor in privileges and protection. A tax is not a toll; a tax is a demand of sovereignty, while a toll is a demand of proprietorship.

Loan Assn. *v.* Topeka, 20 Wall. 664.
Illinois Cent. R. Co. *v.* Decatur, 147 U. S. 198.
U. S. *v.* Railroad Co., 17 Wall. 326.
Cole *v.* La Grange, 113 U. S. 1.
Dobbins *v.* Commissioners, 16 Pet. 445.
Van Brocklin *v.* Tennessee, 117 U. S. 159.

County of Mobile *v.* Kimball, 102 U. S. 703.
Case of State Freight Tax, 15 Wall. 278.
St. Louis *v.* Western Union Tel. Co., 148 U. S. 97.

Duties, Imposts, and Excises

The Constitution uses "duties, imposts, and excises" in a natural sense and in antithesis to "direct taxes." "Duties" and "imposts" are synonymous terms, and are both definable as a tax levied upon articles imported from foreign countries, while an excise is an inland tax generally imposed upon manufactures, but sometimes upon consumption and upon retail sales. "Excise" is not to be confused with "license."

Pollock *v.* Farmers Loan, etc., Co., 158 U. S. 619.
Nicol *v.* Ames, 173 U. S. 518.
Hylton *v.* U. S., 3 Dall. 171.
U. S. *v.* Tappan, 11 Wheat. 419.
Woodruff *v.* Parham, 8 Wall. 123.
Hinson *v.* Lott, 8 Wall. 148.
License Cases, 5 Wall. 462.
Pacific Ins. Co. *v.* Soule, 7 Wall. 445.
Pervear *v.* Commonwealth, 5 Wall. 475.
Hamilton *v.* Dillin, 21 Wall. 73.
Spreckels Sugar Ref. Co. *v.* McClain, 192 U. S. 397.

These two classes, "taxes," so called, and "duties, imposts, and excises," apparently embrace all forms of taxation contemplated by the Constitution.

Thomas *v.* U. S., 192 U. S. 370.

The grant is limited to two ways: The revenue must be collected for the public purposes, and all duties, imposts, and excises must be uniform throughout the United States.

South Carolina *v.* U. S., 199 U. S. 450.
See also—
Flint *v.* Stone Tracy Co., 220 U. S. 107.
Downes *v.* Bidwell, 182 U. S. 244.
Dooley *v.* U. S., 183 U. S. 151.
Loughborough *v.* Blake, 5 Wheat. 317.
Cooley *v.* Philadelphia, 12 How. 298.
Hadden *v.* Collector, 5 Wall. 107.
Head Money Cases, 112 U. S. 580.
Knowlton *v.* Moore, 178 U. S. 41.
Binns *v.* U. S., 194 U. S. 486.
Rainey *v.* U. S., 232 U. S. 310.
Billings *v.* U. S., 232 U. S. 261.
U. S. *v.* Bennett, 232 U. S. 299.
Stanton *v.* Baltic Min. Co., 240 U. S. 103.
High *v.* Coyne, 178 U. S. 111.
Patton *v.* Brady, 184 U. S. 622.
Brushaber *v.* Union Pac. R. Co., 240 U. S. 1.
U. S. *v.* Singer, 15 Wall. 111.

The only rule of uniformity prescribed with respect to duties, imposts, and excises laid by Congress is the territorial uniformity required by Article I, section 8.

LaBelle Iron Works *v.* U. S., 256 U. S. 392.

Death Duties, Estate Taxes, and Succession Taxes.

The estate tax imposed by the revenue act of 1918 (40 Stat. 1096) is not a succession tax upon the benefits received by devisees and legatees, but an excise or death duty upon the transfer of the decedent's estate.

Y. M. C. A. *v.* Davis, 264 U. S. 47.
Edwards *v.* Slocum, 264 U. S. 61.

Want of Due Process of Law

While undoubtedly both the fifth and tenth amendments qualify, in so far as they are applicable, all the provisions of the Constitution, nothing in those amendments operates to take away any grant of power upon Congress to lay taxes. The right of Congress to tax, within its delegated power, being unrestrained, except as limited by the Constitution, it is within the authority conferred upon Congress to select the objects upon which the excise should be laid. It therefore follows that in exerting its power no want of due process of law can possibly result.

McCray *v.* U. S., 195 U. S. 61.
Billings *v.* U. S., 232 U. S. 261.
U. S. *v.* Bennett, 232 U. S. 299.

Collection of Taxes

In U. S. *v.* Tobacco (103 Fed. 455) it was said that "the Constitution confers the power upon Congress to lay and collect taxes, but leaves it to the wisdom of Congress to prescribe the mode, manner, and means of levying and collecting the same."

See also—
Felsenheld *v.* U. S., 186 U. S. 126.
Springer *v.* U. S., 102 U. S. 586.
Murray *v.* Hoboken Land, etc., Co., 18 How. 272.
Passavant *v.* U. S., 148 U. S. 214.

Taxing Power Is Exclusive and Concurrent

The State has power, so long as it does not trench upon the Constitution, to tax all persons, property, and business within its jurisdiction or reach.

Hughes *v.* Dundee, 140 U. S. 98.
See also—
Dundee *v.* School Dist., 19 Fed. 359.
High *v.* Coyne, 178 U. S. 111.
Rast *v.* Van Deman, 240 U. S. 342.
Tanner *v.* Little, 240 U. S. 369.
Van Allen *v.* Assessors, 3 Wall. 573.
Hamilton *v.* Massachusetts, 6 Wall. 632.
Oulton *v.* Savings Inst., 17 Wall. 109.
Barnes *v.* The Railroads, 17 Wall. 294.
State Tonnage Tax Cases, 12 Wall. 214.
License Tax Cases, 5 Wall. 462.
Pervear *v.* Massachusetts, 5 Wall. 478.
Flaherty *v.* Hanson, 215 U. S. 515.
U. S. *v.* Singer, 149 U. S. 210.
Dodge *v.* Woolsey, 18 How. 331.
McGuire *v.* Commonwealth, 3 Wall. 387.
Hylton *v.* U. S., 3 Dall. 171.

Scholey *v.* Rew, 23 Wall. 331.
Head Money Cases, 112 U. S. 580.
Knowlton *v.* Moore, 178 U. S. 41.
Patton *v.* Brady, 184 U. S. 608.
Snyder *v.* Bettman, 190 U. S. 249.
South Carolina *v.* U. S., 199 U. S. 437.
Veazie Bank *v.* Fenno, 8 Wall. 533.
Collector *v.* Day, 11 Wall. 113.
U. S. *v.* Railroad Co., 17 Wall. 322.
Pollock *v.* Farmers Loan, etc., Co., 157 U. S. 429.
Flint *v.* Stone Tracy Co., 220 U. S. 107.

Territorial Extent of Power

Duties exacted by the military authorities in conquered territories held lawful.

Cross *v.* Harrison, 16 How. 164.
Railroad Co. *v.* Collector, 100 U. S. 595.
U. S. *v.* Erie R. Co., 106 U. S. 327.

The imposition of duties upon imports from Porto Rico is a constitutional exercise of the power of Congress.

Downes *v.* Bidwell, 182 U. S. 244.
Dooley *v.* U. S., 183 U. S. 151.
Goetze *v.* U. S., 182 U. S. 221.

Taxation of Governmental Agencies

Implied constitutional restrictions upon the taxing power are as effectual as those expressed. Such an implied restriction prevents the taxation of an instrumentality of the Federal Government by the States and of a State agency by the Federal Government.

Ward *v.* Maryland, 12 Wall. 427.
Van Brocklin *v.* Tennessee, 117 U. S. 177.
Pollock *v.* Farmers Loan, etc., Co., 157 U. S. 584.
U. S. *v.* Railroad Co., 17 Wall. 322.
McCulloch *v.* Maryland, 4 Wheat. 316.
Van Allen *v.* Assessors, 3 Wall. 591.
Austin v. Aldermen, 7 Wall. 694.
Banks *v.* Mayor, 7 Wall. 16.
Smith *v.* Kansas City Title Co., 255 U. S. 180.
Hamilton *v.* Massachusetts, 6 Wall. 639.
People *v.* Commissioners, 4 Wall. 244.
Osborn *v.* Bank, 9 Wheat. 738.
Farmers', etc., Natl. Bank *v.* Dearing, 91 U. S. 34.
Dobbins *v.* Erie County, 16 Pet. 435.
Low *v.* Austin, 13 Wall. 29.
Wisconsin R. R. *v.* Price County, 133 U. S. 496.
Railroad Co. *v.* Peniston, 18 Wall. 5.
Central Pac. R. Co. *v.* California, 162 U. S. 125.
License cases, 5 How. 504.
Owensboro Bank *v.* Owensboro, 173 U. S. 667.
Talbot *v.* Silver Bow County, 139 U. S. 440.
Weston *v.* Charleston, 2 Pet. 449.
Bank of Commerce *v.* New York, 2 Black 620.
Home Ins. Co. *v.* New York, 134 U. S. 594.
Thomson *v.* Pacific R. R., 9 Wall. 579.
National Bank *v.* Commonwealth, 9 Wall. 353.

Western Union Tel. Co. *v.* Massachusetts, 125 U. S. 530.
California *v.* Central Pac. R. Co., 127 U. S. 1.
U. S. *v.* Stanford, 161 U. S. 412.
Searight *v.* Stokes, 3 How. 150.
Webber *v.* Virginia, 103 U. S. 344.

Mortgage executed to a Federal land bank is an instrumentality of Government and can not be subjected to State recording tax.

Federal Land Bank *v.* Crosland, 261 U. S. 374.

In Clallam County *v.* U. S., 263 U. S. 341, it was held that State taxation of corporation organized by the United States for war purposes, whose stock is held by the United States, is invalid.

See also U. S. *v.* Walter, 263 U. S. 15, holding that section 35 of the Criminal Code, forbidding fraudulent claims against corporations in which the United States is stockholder, refers only to its corporate instrumentalities, like the Emergency Fleet Corporation, and is constitutional.

Taxation of National Banks

National banks, their property, or the shares of their capital stock can not be taxed by the States otherwise than in conformity with the terms and restrictions imposed by Congress in assenting to such taxation. Under section 5219, R. S. (prior to the amendment of March 4, 1923), national banks and their property were free from State taxation, except on their real property and on shares held by them in other national banks; and all shares in such banks were taxable to their owners, the stockholders, subject to the restrictions that they be not taxed higher than other moneyed capital employed in competition with such banks, and that the taxing of shares of nonresidents of the State be at the place of the bank's location.

Des Moines Bank *v.* Fairweather, 263 U. S. 103, which see also as to tax-exempt securities.

Taxation of Salary of State Judge

In Collector *v.* Day (11 Wall. 113) acts of Congress levying taxes on incomes were held unconstitutional as applied to the official salary of a judge of a State court.

Taxation of Person Employing Child Labor

The Child Labor Tax Law (Act of Feb. 24, 1919), imposing a tax on the net income of a person employing child labor held not an act imposing a tax under this clause and unconstitutional as attempting to regulate State matters.

Bailey *v.* Drexel Furn. Co., 259 U. S. 20.

Tax on Future Sales

An act of Congress which was manifestly intended to regulate business can not be sustained as an exercise of the taxing power merely because it sought to compel obedience by imposing a prohibitory tax on those who violated the regulations.

Hill *v.* Wallace, 259 U. S. 44.
Browne *v.* Thorn, 260 U. S. 137.

Penalty Designated Tax

The mere use of the word "tax" in an act primarily designed to define and suppress crime is not enough to show that a tax was laid; but, if by its very nature the imposition is a penalty, it must be so regarded.

Lipke *v.* Lederer, 259 U. S. 557.
Regal Drug Co. *v.* Wardell, 260 U. S. 386.

To Pay the Debts

The power to pay the debts is broad enough to include claims of citizens arising on obligations of right and justice.

U. S. *v.* Realty Co., 163 U. S. 427.

Congress has power to enact that debts due the United States should have priority of payment out of the estate of the insolvent debtor.

U. S. *v.* Fisher, 2 Cranch 358.
Legal Tender Case, 110 U. S. 421.

To Provide for the Common Defense and General Welfare

The general welfare clause contains no provision of power, of itself, to enact any legislation, but, on the contrary, the words "and provide for the common defense and general welfare" is a limitation of the taxing power of the United States, and that only.

U. S. *v.* Boyer, 85 Fed. 432.
Binns *v.* U. S., 194 U. S. 486.
Ward *v.* Maryland, 12 Wall. 418.

As to taxation with a moral end in view, the court said: "That Congress may under the broad authority of the taxing power tax intoxicating liquors, notwithstanding their production is prohibited and punished, we have no question. The fact that the statute in this respect had a moral end in view, as well as the raising of revenue, presents no valid constitutional objection to its enactment."

U. S. *v.* Yuginovich, 256 U. S. 462.

To invoke the judicial power to disregard a statute as unconstitutional, the party who assails it must show not only that the statute is invalid, but that he has sustained, or is immediately in danger of sustaining, some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.

Massachusetts *v.* Mellon, 262 U. S. 447.

The courts may determine whether tax act is for public object.

St. Paul Trust Bank *v.* American Clearing Co., 291 Fed. 212.

Clause 2.—TO BORROW MONEY.

The Congress shall have power . . . To borrow money on the credit of the United States.

The Power in General

This is a power vested in the National Government for the safety and welfare of the whole people, and is not to be construed in a restricted sense. It is a power to raise money for the public

use on the pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the Government.

Legal Tender Case, 110 U. S. 444.
Weston *v.* Charleston, 2 Pet. 465.
Banks *v.* Mayor, 7 Wall. 23.
Hepburn *v.* Griswold, 8 Wall. 616.
Craig *v.* Missouri, 4 Pet. 435.
The Floyd Acceptances, 7 Wall. 675.
Bank *v.* Supervisors, 7 Wall. 26.
Veazie Bank *v.* Fenno, 8 Wall. 549.
National Bank *v.* U. S., 101 U. S. 6.
U. S. *v.* Sacks, 257 U. S. 37.
U. S. *v.* Janowitz, 257 U. S. 42.

Legal Tender

The clauses granting to Congress the power to coin money (Art. I, sec. 8, cl. 5), and prohibiting the States from emitting bills of credit (Art. I, sec. 10, cl. 1), do not impliedly prohibit Congress from making Treasury notes legal tender, and while no such power is expressly granted by the Constitution, the authority is necessarily implied as a means to the exercise of the functions of government. It is a necessary incident of sovereignty. If, in the judgment of the Congress, it is necessary, in order to enhance the credit of the Government's promises, it may make them legal tender. Congress may make Treasury notes legal tender, and, while such notes are only the representatives of money, they may be made a substitute therefor.

Hepburn *v.* Griswold, 8 Wall. 603, in which the legal tender acts of Congress were held unconstitutional so far as they applied to debts contracted prior to the passage of the acts. But the decision on this point was overruled in the Legal Tender Cases, 12 Wall. 457.
Dooley *v.* Smith, 13 Wall. 604.
Railroad Co. *v.* Johnson, 15 Wall. 195.
U. S. *v.* Reese, 92 U. S. 253.
Bissell *v.* Heyward, 96 U. S. 587.

Where the contract is to pay in a particular kind of money, as "gold" or "specie" it can not be discharged in legal tender notes.

Bronson *v.* Rodes, 7 Wall. 250.
Butler *v.* Horwitz, 7 Wall. 258.
Hepburn *v.* Griswold, 8 Wall. 607.
Gregory *v.* Morris, 96 U. S. 625.
Dewing *v.* Sears, 11 Wall. 380.
Trebilcock *v.* Wilson, 12 Wall. 695.

The "debts" contemplated by the legal tender act are debts arising on contract and demand and do not include taxes.

Lane County *v.* Oregon, 7 Wall. 71.
Hagar *v.* Reclamation Dist., 111 U. S. 706.

Under its power over money and the revenue, Congress can establish a national bank and subscribe to its stock, although it be a corporation organized for profit.

Legal Tender Cases, 12 Wall. 457.

Exemption from Taxation

A State tax on the loans of the Federal Government is a restriction on its power to borrow money, and if it existed might wholly defeat the Federal power.

Bank of Commerce *v.* New York, 2 Black 620.
Weston *v.* Charleston, 2 Pet. 449.
Hamilton *v.* Massachusetts, 6 Wall. 632.
Home Ins. Co. *v.* New York, 119 U. S. 129; 134 U. S. 594.
Plummer *v.* Coler, 178 U. S. 115.
Smith *v.* Kansas City Title Co., 255 U. S. 180.

The power to issue securities being an incident of the power to borrow money, the securities thus issued are clearly instruments of the Federal Government exempt from State taxation.

McCulloch *v.* Maryland, 4 Wheat. 439.
Bank Tax Cases, 2 Wall. 200.
Van Allen *v.* Assessors, 3 Wall. 573.
Society for Savings *v.* Coite, 6 Wall. 604.
Austin *v.* Aldermen, 7 Wall. 699.
Banks *v.* Mayor, 7 Wall. 23.
Bank *v.* Supervisors, 7 Wall. 30.
Mitchell *v.* Board, 91 U. S. 206.
Palmer *v.* McMahon, 133 U. S. 666.

Of General Application

The following cases may be found to be of general interest and application in connection with the above:

People *v.* Commissioners, 4 Wall. 244.
U. S. *v.* Perkins, 163 U. S. 630.
Magoun *v.* Illinois, etc., Bank, 170 U. S. 290.
Osborn *v.* U. S. Bank, 9 Wheat. 859.
Owensboro Bank *v.* Owensboro, 173 U. S. 667.
Lionberger *v.* Rouse, 9 Wall. 468.
National Bank *v.* Commonwealth, 9 Wall. 353.
Cummings *v.* National Bank, 101 U. S. 156.
Van Slyke *v.* Wisconsin, 154 U. S. 581.
Merchants Bank *v.* Pennsylvania, 167 U. S. 466.
Boyer *v.* Boyer, 113 U. S. 695.
Whitbeck *v.* Mercantile Bank, 127 U. S. 199.
Supervisors *v.* Stanley, 105 U. S. 308.
Mercantile Bank *v.* New York, 121 U. S. 152.
People *v.* Weaver, 100 U. S. 543.
Pelton *v.* Natl. Bank, 101 U. S. 145.
Davenport Bank *v.* Board of Equalization, 123 U. S. 85.

Clause 3.—REGULATION OF COMMERCE.

The Congress shall have power . . . to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

Leading Cases

Gibbons *v.* Ogden (9 Wheat. 1), in which Chief Justice Marshall said that commerce was traffic and intercourse; that it described commercial intercourse between nations and parts of

nations in all its branches; that commerce included navigation; that the language of this clause comprehends every species of commercial intercourse between the United States and foreign nations; that no sort of trade can be carried on between this country and any other to which this power does not extend; that commerce, as used in the Constitution, is a unit, every part of which is indicated by the term; that the word "among," as used in the clause, means "intermingled with," and that it was restricted to that commerce which concerned more States than one; that the clause did not comprehend that commerce which is completely internal and carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States; that the completely internal commerce of a State may be considered as reserved to the State itself; that in regulating commerce with foreign nations the power of Congress does not stop at State lines; that the commerce of the United States with foreign nations is that of the whole United States; that this principle is still more clear when applied to commerce "among the several States"; that commerce among the States must of necessity be commerce *with* the States, and the power of Congress must be exercised within the territorial jurisdiction of the States. The Chief Justice then inquired, "What is this power of Congress?" and said it is the power to regulate, the power to prescribe the rule by which commerce shall be governed; that it is vested in Congress, is complete in itself, and may be exercised to its utmost extent, for it has no limitations beyond those found in the Constitution.

Brown *v.* Maryland (12 Wheat. 419), in which the court said:

> Any penalty inflicted on the importer for selling the article in his character of importer must be in opposition to the act of Congress which authorizes importation. Any charge on the introduction and incorporation of the articles into and with the mass of property in the country must be hostile to the power given to Congress to regulate commerce.

Trade-mark Cases (100 U. S. 96), in which it was held:

> When, therefore, Congress undertakes to enact a law which can only be valid as a regulation of commerce it is reasonable to expect to find on the face of the law, or from its essential nature, that it is a regulation of commerce with foreign nations, or among the several States, or with the Indian tribes. If not so limited it is in excess of the power of Congress. If its main purpose be to establish a regulation applicable to all trade, to commerce at all points, especially if it be apparent that it is designed to govern the commerce wholly between citizens of the same State, it is obviously the exercise of a power not confided to Congress.

Paul *v.* Virginia (8 Wall. 168), holding:

> Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded

from one State to another and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States.

The ruling as to a contract of fire insurance was afterwards applied to a contract of marine insurance (Hooper *v.* California, 155 U. S. 648), and as to a contract of mutual life insurance (New York Life Ins. Co. *v.* Cravens, 178 U. S. 389). The principal case has been much criticized but has been steadily followed. Its doctrine was reexamined in the light of subsequent decisions and was reaffirmed in New York Life Ins. Co. *v.* Deer Lodge County (231 U. S. 495).

Cooley *v.* Philadelphia (12 How. 299), in which the court said:

Whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.

The conclusion of this opinion was that the mere grant to Congress of the power to regulate commerce did not deprive the States of power to regulate pilots, and although Congress has legislated on this subject, its legislation manifests an intention, with a single exception, not to regulate this subject, but to leave its regulation to the several States.

In this connection, see Anderson *v.* Pacific Coast S. S. Co. (225 U. S. 187), summarizing the pilotage laws.

Hall *v.* De Cuir (95 U. S. 487), wherein it was said:

There can be no doubt but that exclusive power has been conferred upon Congress in respect to the regulation of commerce among the several States. The difficulty has never been as to the existence of this power, but as to what is to be deemed an encroachment upon it; for, as has been often said, "Legislation may in a great variety of ways affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution." * * * A State might regulate the charges of public warehouses and of railroads situated entirely within the State, even though those engaged in commerce among the States might sometimes use the warehouses or the railroads in the prosecution of their business. * * * So, too, it has been held that States may authorize the construction of dams and bridges across navigable streams situated entirely within their respective jurisdictions. * * * The same is true of turnpikes and ferries. By such statutes the States regulate, as a matter of domestic concern, the instruments of commerce situated wholly within their own jurisdictions and over which they have exclusive governmental control, except when employed in foreign or interstate commerce. As they can only be used in the State, their regulation for all purposes may properly be assumed by the State until Congress acts in reference to their foreign or interstate relations. When Congress does act the State laws are superseded only to the extent that they affect commerce outside a State as it comes within the State. * * * The line which separates the powers of the States from this exclusive power of Congress is not always distinctly marked, and oftentimes it is not easy to determine on which side a particular case belongs. * * * But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress.

Pensacola Telegraph Co. *v.* Western Union (96 U. S. 9), in which the court said:

> The powers thus granted are not confined to the instrumentalities * * * known or in use when the Constitution was adopted, but they keep pace with the progress of the country and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate at all times and under all circumstances. As they were intrusted to the General Government for the good of the Nation, it is not only the right, but the duty, of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation.

United States *v.* Knight Co. (156 U. S. 1), in which it was held:

> Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce.

The Shreveport Case (Houston, etc., R. Co. *v.* U. S., 234 U. S. 342), in which the court held:

> Congress in the exercise of its paramount power may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. This is not to say that Congress possesses the authority to regulate the internal commerce of a State, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled. * * * We find no reason to doubt that Congress is entitled to keep the highways of interstate communication open to interstate traffic upon fair and equal terms. That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discrimatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention. Nor can the attempted exercise of State authority alter the matter, where Congress has acted, for a State may not authorize a carrier to do that which Congress is entitled to forbid. * * * It is manifest that the State can not fix the relation of the carriers' interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority.

The "Recapture" Case (Dayton-Goose Creek Ry. *v.* U. S., 263 U. S. 456), interpreting section 422 of the transportation act of 1920 (section 15a, interstate commerce act), held:

> That the provisions for "recapture" and use of excess income are essential to the plan of the act, which aims for an efficient national transportation system, and therein seeks to maintain uniform rates for all shippers as a means of distributing traffic and avoiding congestion on the stronger railroads, while keeping the net returns of the railroads, whether strong or weak, to the varying percentages that are fair to them, respectively; rates which as a body enable all the railroads necessary to do the business of a rate section, to enjoy not more than a fair net operating income on the aggregate value of their properties therein economically and efficiently operated, are, in their general level, reasonable from the standpoint of the individual shipper in that section; the statute leaves the reasonableness of each particular rate open to inquiry independently of the net return to the carrier from all; a railroad, however strong financially, is not entitled as a constitutional right to more than a fair net operating income upon the value of its properties devoted to transportation. Under the statute excess income is taken in trust, and the carrier never has such a title to it as to render its recapture by the Government a taking without due process, in violation of the Fifth Amendment. The recapture clause does not, by reducing net income from intrastate rates, invade the reserved power of the States in violation of the Tenth Amendment, but, in view of its relation to the plan and national purpose of the act, is within the power of Congress over interstate commerce.

Addyston Pipe & Steel Co. *v.* U. S. (175 U. S. 211), holding:

> Under this grant of power to Congress, that body, in our judgment, may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract will be, when carried out, to directly, and not as a mere incident to other and innocent purposes, regulate to any substantial extent interstate commerce. * * * We do not assent to the correctness of the proposition that the constitutional guaranty of liberty to the individual to enter into private contracts limits the power of Congress and prevents it from legislating upon the subject of contracts of the class mentioned.

Champion *v.* Ames (188 U. S. 321), in which it was held that "lottery tickets are subjects of traffic, and therefore are subjects of commerce, and the regulation of the carriage of such tickets from State to State, at least by independent carriers, is a regulation of commerce among the several States"; such interstate carriage prohibited as injurious to the public generally.

Prohibition as a means of regulation has been approved by the Supreme Court in several other cases:

U. S. *v.* Holliday, 3 Wall. 407.
Buttfield *v.* Stranahan, 192 U. S. 470.
U. S. *v.* Delaware & H. Co., 213 U. S. 366.
Hoke *v.* U. S., 227 U. S. 308.

I. C. C. *v.* Delaware, etc., R. Co. (220 U. S. 235), holding that a carrier can not make mere ownership of goods tendered for transportation the test of the duty to carry, nor may a carrier discriminate in fixing charges for carriage upon such ownership, and that in the absence of statutory authority to exclude forwarding agents from availing of published rates the courts can

not overrule a conclusion of the Interstate Commerce Commission that such exclusion would create a preference.

The term "commerce" not only includes navigation but the transportation, by whatever agencies, of commodities or of passengers, even on foot, or the transmission of ideas, and it is immaterial whether such transportation is connected with a sale. Included in the term transportation are all the services in connection with the receipt and delivery of the property transported. A contract may or may not be a transaction of interstate commerce. If it is in the form of a bill of lading, it is; but if in the form of a bill of exchange, or of a contract to perform labor outside the State, or of a contract for future delivery to be executed in another State, or of the contract of a private banker with his depositors, it is not.

Pennsylvania *v.* Wheeling Brdg. Co., 13 How. 518.
Gilman *v.* Philadelphia, 3 Wall. 713.
Head Money Cases, 112 U. S. 580.
U. S. *v.* Trans-Missouri Frt. Assn., 166 U. S. 290.
The Passenger Cases, 7 How. 282.
Covington Brdg. Co. *v.* Kentucky, 154 U. S. 204.
International Text-Book Co. *v.* Pigg, 217 U. S. 91.
Hanley *v.* Kansas City, etc., R. Co., 187 U. S. 617.
Houston, etc., R. Co. *v.* Mayes, 201 U. S. 321.
Almy *v.* California, 24 How. 169.
Woodruff *v.* Parham, 8 Wall. 123.
Nathan *v.* Louisiana, 8 How. 73.
Williams *v.* Fears, 179 U. S. 270.
Ware & Leland *v.* Mobile County, 209 U. S. 405.
Engel *v.* O'Malley, 219 U. S. 128.
See also—
Henderson *v.* New York City, 92 U. S. 259.
Lord *v.* Steamship Co., 102 U. S. 541.
The *Daniel Ball*, 10 Wall. 557.
Willson *v.* Blackbird Creek etc. Co., 2 Pet. 245.
Escanaba Co. *v.* Chicago, 107 U. S. 678.
Welton *v.* Missouri, 91 U. S. 275.
Railroad Co. *v.* Fuller, 17 Wall. 560.
Lake Shore etc. R. Co. *v.* Ohio, 173 U. S. 285.
Turner *v.* Maryland, 107 U. S. 38.
Inman S. S. Co. *v.* Tinker, 94 U. S. 238.

Interstate commerce is not confined to transportation from one State to another, but comprehends all commercial intercourse between different States and all the component parts of that intercourse, including the purchase and sale of the commodities transported.

Dahnke-Walker Co. *v.* Bondurant, 257 U. S. 282.

The Grant of Power

To Congress

It is Congress, and not the judicial department, to which the Constitution has given the power to regulate commerce with foreign nations and among the several States. The courts can never take the initiative on this subject.

Transportation Co. *v.* Parkersburg, 107 U. S. 701.

To Regulate

To regulate, in the sense intended, is to foster, protect, control, and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large.

Second Employers' Liability Cases, 223 U. S. 47.

The power to regulate includes the power to prohibit in cases where such prohibition is in aid of the lawful protection of the public.

Lottery Case, 188 U. S. 321.
Reid *v.* Colorado, 187 U. S. 137.
Addyston Pipe, etc., Co. *v.* U. S., 175 U. S. 211.
U. S. *v.* Joint Traffic Assn., 171 U. S. 505.
Rhodes *v.* Iowa, 170 U. S. 412.

Nature, Extent, and Grounds of Power

The power of Congress extends to such acts done on land which interfere with the due exercise of its powers to regulate commerce, including navigation.

U. S. *v.* Coombs, 12 Pet. 72.
Steamship Co. *v.* Joliffe, 2 Wall. 459.

So far as it may be necessary to protect the products of other states and countries from discrimination by reason of their foreign origin, the power of the National Government over commerce reaches the interior of every State in the Union.

Guy *v.* Baltimore, 100 U. S. 434.
St. Louis *v.* Western Union Tel. Co., 149 U. S. 465.

The power to regulate commerce has no limitations other than those prescribed in the Constitution, but does not carry with it the right to destroy or impair those limitations and guaranties which are also placed in the Constitution and amendments.

U. S. *v.* Joint Traffic Assn., 171 U. S. 505.

Relation of Admiralty and Maritime Jurisdiction[1]

The Act of February 26, 1845 (5 Stat. 726), extending the jurisdiction of the district courts to certain cases upon the lakes and navigable waters connecting the same is not referable to the commerce clause, but was enacted under the clause granting maritime and admiralty jurisdiction to the Federal courts.

The *Genesee Chief v.* Fitzhugh, 12 How. 443.
Fretz *v.* Bull, 12 How. 466.
The *Belfast*, 7 Wall. 624.

The power of Congress to legislate on the subject of the right of recovery for death on the high seas caused by negligence has been derived both from the power to regulate commerce and from the clause extending the judicial power to cases of maritime and admiralty jurisdiction.

Old Dominion S. S. Co. *v.* Gilmore, 207 U. S. 404.

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[1] See also same subject, Article III, section 2, p. 446.

Congress has undoubted authority under the commercial power, if no other, to introduce such changes as are likely to be needed. The scope of the maritime law and that of commercial regulation are not conterminous, but the latter embraces much of the largest portion of ground covered by the former. Under it Congress has regulated the registry, enrolment, license, and nationality of ships and vessels; the method of recording bills of sale and mortgages thereon; the rights and duties of seamen; the limitations of the responsibility of shipowners for the negligence and misconduct of their captains and crews; and many other things of a character truly maritime.

The *Lottawanna*, 21 Wall. 577.
Providence, etc., S. S. Co. *v.* Hill Mfg. Co., 109 U. S. 589.

Right to Raise Constitutional Question

An interstate carrier who has refused to furnish cars for interstate transportation, as required by State statute, can not test the constitutionality of the act as affecting interstate commerce in a suit to enjoin actions to recover penalties for violation of its provisions where provisions affecting interstate commerce are separable from the remaining provisions.

Hampton *v.* St. Louis, etc., R. Co., 227 U. S. 456.
Williams *v.* Walsh, 222 U. S. 415.
Missouri, etc., R. Co. *v.* Cade, 233 U. S. 642.

The constitutionality of an act is not involved in a case where the plaintiff is not affected by the provisions of the act.

Chicago Board of Trade *v.* Olsen, 262 U. S. 1.

Effect of the Fifth Amendment[1]

The power of Congress to regulate commerce is subject to the limitation of the fifth amendment, and in exercising the power to take private property it must proceed subject to that amendment.

Monongahela Nav. Co. *v.* U. S., 148 U. S. 312.
Dayton-Goose Creek Ry. *v.* U. S., 263 U. S. 456.
Pittsburgh & W. V. Ry. *v.* I. C. C., 293 Fed. 1001.

Riparian owners who have erected on a water front wharves conforming to harbor line adopted by the Federal Government have no right to compensation under the fifth amendment where Congress establishes a new harbor line requiring destruction of a portion of such structures.

Greenleaf-Johnson Lbr. Co. *v.* Garrison, 237 U. S. 251.
U. S. *v.* Delaware & H. Co., 213 U. S. 366.

Effect of the Eleventh Amendment[2]

This amendment, prohibiting the bringing of a suit against a State by a citizen of another State, can not be construed to nullify the power of Congress to regulate commerce nor prevent an action to restrain a State railroad commission from enforcing an order injuriously affecting interstate commerce.

Mississippi *v.* Illinois Cent. R. Co., 203 U. S. 335.

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[1] See p. 575.

[2] See p. 638.

Commencement and Termination of Power

Goods do not cease to be part of the general mass of property in the State, subject as such to its jurisdiction and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or journey.

Coe *v.* Errol, 116 U. S. 527.
Texas, etc., R. Co. *v.* Sabine Tram Co., 227 U. S. 111.
Southern Pac. Term. Co. *v.* I. C. C., 219 U. S. 498.
The *Daniel Ball*, 10 Wall. 565.
Diamond Match Co. *v. Ontonagon*, 188 U. S. 96.
Kidd *v.* Pearson, 128 U. S. 24.
U. S. *v.* Knight Co., 156 U. S. 13.
Addyston Pipe, etc., Co. *v.* U. S. 175 U. S. 211.
Louisiana *v.* Texas, etc., R. Co., 229 U. S. 336.

The commercial power continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it, even after it has entered the State, from any burdens imposed by reason of its foreign origin.

Welton *v.* Missouri, 91 U. S. 282.
Tierman *v.* Rinker, 102 U. S. 127.
General Oil Co. *v.* Crain, 209 U. S. 211.
Kelley *v.* Rhoads, 188 U. S. 7.
Pittsburg, etc., Coal Co. *v.* Bates, 156 U. S. 577.
Brown *v.* Houston, 114 U. S. 622.
Illinois Cent. R. Co. *v.* Louisiana, 236 U. S. 157.
Susquehanna Coal Co. *v.* South Amboy, 228 U. S. 665.
Johnson *v.* Southern Pac. Co., 196 U. S. 22.

The point of time when the prohibition ceases and the power of the State to tax commences is not the instant when the article enters the country, but when the importer has so acted upon it that it has become incorporated and mixed up with the mass of property in the country, which happens when the original package is no longer such in his hands.

Leisy *v.* Hardin, 135 U. S. 110.
Brown *v.* Maryland, 12 Wheat. 419.
Emert *v.* Missouri, 156 U. S. 296.
McNeill *v.* Southern R. Co., 202 U. S. 543.

When goods are sent from one State to another for sale, or in consequence of a sale, they become part of its general property, and amenable to its laws; provided that no discrimination be made against them as goods from another State, and that they be not taxed by reason of being brought from another State, but only taxed in the usual way as other goods are.

Robbins *v.* Shelby County, 120 U. S. 497.
License Cases, 5 How. 574.

Application of Principles of Common Law

The principles of the common law are operative upon all interstate commercial transactions except so far as they are modified by congressional enactment.

Western Union Tel. Co. *v.* Call, 181 U. S. 101.
Hall *v.* De Cuir, 95 U. S. 490.

National Power of Eminent Domain[1]

Whenever it becomes necessary, for the accomplishment of any object within the authority of Congress, to exercise the right of eminent domain and take private lands, making just compensation to the owners, Congress may do this, with or without a concurrent act of the State in which the lands lie.

Luxton *v.* North River Bridge Co., 153 U. S. 529.
Cherokee Nation *v.* Southern Kansas R. Co., 135 U. S. 657.
Pollard *v.* Hagan, 3 How. 229.
Gilman *v.* Philadelphia, 3 Wall. 713.

Exclusive Powers of Congress Over Commerce

In General

In the exercise of its exclusive power to regulate interstate and foreign commerce Congress has enacted several statutes which not only restrain the States but act directly upon individuals and corporations engaged in such commerce and impose restrictions or create affirmative duties. Among the most important of these are:

The interstate commerce act, first enacted in 1887 and many times amended. The predominant purpose of its enactment was to prevent unreasonable and discriminatory rates, but the Interstate Commerce Commission was not empowered to fix rates.

By the Hepburn Act of 1906 this power was conferred upon the commission, transportation companies were forbidden to transport their own commodities, the giving of free passes was regulated, pipe lines, express companies, and sleeping-car companies were brought within the provisions of the act, and the supervisory powers of the commission were much enlarged. In 1910 the jurisdiction of the commission was extended to cover telegraph and telephone companies, and it was empowered to suspend advances in rates.

By the Panama act of 1912 the power of the commission was extended to transportation by both water and rail, but not over commerce that moved wholly by water. In 1913 the commission was directed to undertake a physical valuation of all the property owned by every carrier subject to its jurisdiction.

The antitrust act of 1890 provided that "every contract, combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is hereby declared to be illegal." This act has been applied to combinations among transportation companies, to holding companies which interfere with the freedom of interstate commerce, to combinations of manufacturers for the pur-

[1] See also "Eminent Domain," under Amendment 5, p. 607.

pose of controlling the course of trade, and to labor unions conducting a boycott which interfered with interstate commerce.

The employers' liability act of 1906 considerably modified the fellow-servant rule of the common law as applied to the employees of carriers. As the act applied to persons in both intrastate and interstate commerce, it was declared unconstitutional in respect to the former, but was held valid as to carriers in the District of Columbia and the Territories. In order to meet the objections raised by the Supreme Court, Congress in 1908 passed a second act, which is confined to persons actually engaged in interstate commerce, and this was sustained by the Supreme Court.

The Federal safety appliance acts, enacted in 1893 and the years following, required interstate trains to be equipped with certain safety devices.

The hours of service act of 1907 restricted the hours of labor of railway employees operating trains moving in interstate commerce.

The so-called "Adamson law" of 1916 established an eight-hour day and minimum wages for employees of carriers engaged in interstate and foreign commerce.

The Federal Trade Commission act of 1914 creates the Federal Trade Commission. The gist of the act is contained in the provision "that unfair methods of competition in commerce are hereby declared unlawful."

The Clayton Antitrust Act of 1914 undertakes to prevent all persons engaged in interstate commerce from discriminating in prices between different purchasers of commodities or to accord preferential treatment to one person over another. Corporations engaged in interstate commerce are forbidden to purchase the stock of another corporation when such purchase would substantially diminish competition, and the right of individuals to act as director in more than one corporation is restricted. The relation between carriers and the corporations from which they obtain service or supplies is also regulated.

The Federal control act of March 21, 1918, under which, pursuant to the act of August 29, 1916, and the President's proclamation of December 26, 1917, the railroads were taken over and administered under the war power, gave the Government full possession and control of the transportation systems of the country, and gave the President and the Interstate Commerce Commission power to fix all rates, interstate and intrastate, and superseded State power over the subject during the period of such control.

The transportation act of February 28, 1920, Title III, creates the Railroad Labor Board, and clothes it with authority to entertain and decide disputes between carriers and their employees in respect of wages, grievances, rules, or working conditions, directs that all parties to such disputes be accorded a hearing

either in person or by counsel, and requires that the decisions be entered in an appropriate record and that they and all violations of them be given such publicity as the board may indicate. Title IV invests the Interstate Commerce Commission with a substantial measure of control or supervision over interstate rates and fares; over the removal of any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce on the one hand and in interstate commerce on the other, arising from intrastate rates and fares; over the removal of any undue, unreasonable, or unjust discrimination against interstate commerce caused by intrastate rates and fares; over the division of the carriers of the country into territorial groups for valuation and rate-making purposes; over what shall be regarded as a fair return on the aggregate value of the property of the carriers in each group; over the maintenance and use of certain reserve and contingent funds to be set apart from any revenue in excess of such fair returns; over the construction and acquisition of new lines and the extension and abandonment of old ones; over the pooling of traffic or earnings; over the consolidation of carriers; over the issue of stocks, bonds, and other securities by carriers; and over making the same person a director or officer of more than one carrier. These provisions contemplate and require in respect of most of the matters recited that the State wherein the carrier's line lies shall be notified and accorded a hearing before a finding or order is made by the commission.

Texas & Pacific R. Co. *v.* I. C. C., 162 U. S. 211.
Cincinnati, etc., R. Co. *v.* I. C. C., 162 U. S. 184.
U. S. *v.* Delaware & H. Co., 213 U. S. 366.
Wilson *v.* Shaw, 204 U. S. 24.
Lehigh Valley R. Co. *v.* U. S. 243, U. S. 412.
U. S. *v.* Trans-Missouri Frt. Assn., 166 U. S. 290.
Northern Securities Co. *v.* U. S., 193 U. S. 197.
Addyston Pipe, etc., Co. *v.* U. S., 175 U. S. 211.
Montague *v.* Lowry, 193 U. S. 38.
Loewe *v.* Lawler, 208 U. S. 274.
Eastern States Lbr. Assn. *v.* U. S., 234 U. S. 600.
Swift & Co. *v.* U. S., 196 U. S. 375.
U. S. *v.* U. S. Steel Corp., 251 U. S. 417.
Duplex Co. *v.* Deering, 254 U. S. 443.
Geddes *v.* Anaconda Mining Co., 254 U. S. 590.
U. S. *v.* Schrader, 252 U. S. 85.
Frey & Son *v.* Cudahy, 256 U. S. 208.
Employers' Liability Cases, 207 U. S. 463.
El Paso, etc., R. Co. *v.* Gutierrez, 215 U. S. 87.
Second Employers' Liability Cases, 223 U. S. 1.
St. Louis, etc., R. Co. *v.* Taylor, 210 U. S. 281.
Baltimore, etc., R. Co. *v.* I. C. C., 221 U. S. 612.
Missouri, etc., R. Co. *v.* U. S., 231 U. S. 112.
U. S. *v.* Atchison, etc., R. Co., 220 U. S. 37.
Wilson *v.* New, 243 U. S. 332.
Federal Trade Comm. *v.* Beech-Nut Co., 257 U. S. 441.
Federal Trade Comm. *v.* Gratz, 253 U. S. 429 (dissenting opinion by Justice Brandeis).

Northern Pac. R. Co. *v.* North Dakota, 250 U. S. 135.
Krichman *v.* U. S., 256 U. S. 363.
Missouri Pac. R. Co. *v.* Ault, 256 U. S. 554.
Alabama, etc., R. Co. *v.* Journey, 257 U. S. 111.
Texas *v.* I. C. C., 258 U. S. 158.
Texas *v.* Eastern Texas R. Co., 258 U. S. 204.

Section 16 of the interstate commerce act, providing, "All actions at law by carriers subject to this act for recovery of their charges . . . shall be begun within three years from the time the cause of action accrues, and not after," does not apply to an action by the Director General of Railroads to recover demurrage charges accrued to the United States during the period of Federal control of railroads.

Dupont & Co. *v.* Davis, 264 U. S. 456.

This clause vests power to regulate commerce with foreign nations, etc., exclusively in Congress. Whether the power in any given case is vested exclusively in the General Government depends upon the nature of the subject to be regulated. It is only direct interferences with the freedom of interstate commerce that bring a case within the exclusive domain of Federal legislation.

Hanley *v.* Kansas, etc., R. Co., 187 U. S. 617.
Ohio *v.* Worthington, 225 U. S. 101.
Lottery Case, 188 U. S. 358.
Gilman *v.* Philadelphia, 3 Wall. 727.
Field *v.* Barber Asphalt Co., 194 U. S. 623.

The National Government may remove all obstructions to interstate commerce and the transportation of the mails, either by force operating through the Executive or by process emanating from the courts.

In re Debs, 158 U. S. 564.

Any act of a State interfering in any way with the free traffic between citizens of different States in any article of commerce is an attempted regulation of such commerce, and an invasion of the power exclusively conferred upon Congress, whose nonaction with respect to any particular commodity is a declaration of its purpose that the commerce therein shall be free.

Minnesota *v.* Barber, 136 U. S. 313.

Congress has the power to regulate interstate commerce by any means which may be proper, so long as such means are not contrary to some provision of the Constitution.

I. C. C. *v.* Brimson, 154 U. S. 447.
Adams Exp. Co. *v.* Kentucky, 214 U. S. 218.
Kansas City, etc., R. Co. *v.* Kaw Valley, 233 U. S. 75.

A valid regulation of commerce need not apply to all commodities alike, but the regulations may make a discrimination between articles and carriers.

U. S. *v* Delaware & H. Co., 213 U. S. 366.

Commerce among the States in any commodity can only be free when the commodity is exempted from all discriminating regulations and burdens imposed by local authority by reason of its foreign growth or manufacture.

Webber *v.* Virginia, 103 U. S. 351.

This power is exclusive when the subjects of regulation are national in character or admit only of one uniform system of regulation.

Ex Parte McNeil, 13 Wall. 236.
State Freight Tax, 15 Wall. 232.
Mobile County *v.* Kimball, 102 U. S. 691.
Cardwell *v.* American River Brdg. Co., 113 U. S. 205.
Atlantic, etc., Tel. Co. *v.* Philadelphia, 190 U. S. 160.

No part of the power of regulating commerce that is vested in Congress can be executed by a State; that power, so far as it is thus vested, belongs exclusively to Congress.

Gibbons *v.* Ogden, 9 Wheat. 1.
Passenger Cases, 7 How. 283.
Crandall *v.* Nevada, 6 Wall. 35.

Inhibitive congressional legislation is not essential to exclude State legislation upon incidental matters relating to interstate commerce with respect to which the States and Congress have a concurrent power. It is sufficient if the congressional legislation occupies the field of regulation.

Southern R. Co. *v.* Reid, 222 U. S. 424.
Same *v.* Reid & Beam, 222 U. S. 444.

National Subjects Requiring Uniform Regulations

The power to regulate commerce among the States, etc., is an absolute and exclusive grant of power to Congress; so far exclusive that no State has power to make any law or regulation which will affect the free and unrestrained intercourse and trade among the States. Whatever subjects of this power are in their nature national, or admit only of one uniform system of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress. The power embraces all the instruments by which such commerce may be conducted. Commerce, as embraced by this clause, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. Whatever may be the nature and extent of the police power, no definition of it and no urgency for its use can authorize a State to exercise it in regard to a subject matter which has been confided to Congress exclusively. Whenever the statute of a State invades the domain of legislation which belongs exclusively to Congress, it is

void, no matter under what class of powers it may fall or how closely allied to powers conceded to belong to the States.

Pittsburg, etc., Coal Co. *v.* Bates, 156 U. S. 587.
Minnesota Rate Cases, 230 U. S. 352.
Gloucester Ferry Co, *v.* Pennsylvania, 114 U. S. 204.
Walling *v.* Michigan, 116 U. S. 455.
Henderson *v.* New York, 92 U. S. 271.
Leisy *v.* Hardin, 135 U. S. 108.
Hannibal, etc., R. Co. *v.* Husen, 95 U. S. 471.
McDermott *v.* Wisconsin, 228 U. S. 115.
Savage *v.* Jones, 225 U. S. 501.
Schollenberger *v.* Pennsylvania, 171 U. S. 12.

Congress has the power to declare what may be the subject of commerce; may pass all laws necessary or proper for carrying into execution any of the powers specifically conferred, and may make use of any appropriate means for the same. The rule that in the enforcement of provisions guaranteeing civil rights, Congress is limited to the enactment of legislation corrective of any wrong committed by the States and not by the individuals, does not apply to those cases in which Congress is clothed with direct plenary powers of legislation over the whole subject, as in the commerce clause, where it has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof. The power of Congress must be exercised within the territorial jurisdiction of the several States, but in regulating commerce with foreign nations it does not stop at the jurisdictional lines of the several States. The commerce of the United States with foreign nations is that of the whole United States. If Congress has the power to regulate it, that power must be exercised whenever the subject exists. If it exists within the States, if a foreign voyage may commence or terminate at a port within a State, then the power of Congress may be exercised within the State. This principle is, if possible, still more clear when applied to commerce among the several States.

U. S. *v.* Popper, 98 Fed. 423.
Luxton *v.* North River Brdg. Co., 153 U. S. 529.
Hoke *v.* U. S., 227 U. S. 308.
Civil Rights Cases, 109 U. S. 18.
Gibbons *v.* Ogden, 9 Wheat. 195.
Leisy *v.* Hardin, 135 U. S. 100.
Kidd *v.* Pearson, 128 U. S. 16.

The power to regulate commerce is the power to prescribe the rule by which commerce is to be governed. The constitutional guaranty of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in interstate and international commerce. The means necessary

or convenient to the exercise of the power of Congress over commerce may have the quality of police regulations, and Congress has the power to authorize injunctions to restrain obstructions of commerce, but the power of Congress does not comprehend the purely internal domestic commerce of a State.

Gibbons *v.* Ogden, 9 Wheat. 196.
Adair *v.* U. S., 208 U. S. 161.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 203.
Northern Securities Co. *v.* U. S., 193 U. S. 332.
Veazie *v.* Moor, 14 How. 574.
U. S. *v.* Dewitt, 9 Wall. 44.
Trade-mark Cases, 100 U. S. 96.

Congress cannot authorize a trade or business within a State in order to tax it. Congress has no power of regulation nor any direct control over the internal commerce or domestic trade of a State. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution except such as is strictly incidental to the exercise of powers clearly granted to it. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject. It is true that the power of Congress to tax is a very extensive power. It is given in the Constitution with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion. But it reaches only existing subjects.

License Tax Cases, 5 Wall. 470.
Pervear *v.* Massachusetts, 5 Wall. 475.

Incidental Control of Intrastate Rates

Congress may control intrastate rates of a carrier under State authority when necessary to remove the resulting unjust discrimination against interstate commerce from the relation between intrastate and interstate rates which are unreasonable in themselves.

Houston, etc., R. Co. *v.* U. S., 234 U. S. 342.
Illinois Cent. R. Co. *v.* Illinois, 245 U. S. 493.
Wisconsin *v.* Chicago, etc., R. Co., 257 U. S. 563.
New York *v.* U. S., 257 U. S. 591.
Texas *v.* Eastern Texas R. Co., 258 U. S. 204.
New York, etc., R. Co. *v.* New York, 165 U. S. 628.
Lake Shore, etc., R. Co. *v.* Ohio, 173 U. S. 285.
Reid *v.* Colorado, 187 U. S. 137.
Southern R. Co. *v.* Reid, 222 U. S. 424.
St. Louis, etc., R. Co. *v.* Edwards, 227 U. S. 265.
Adams Exp. Co. *v.* New York, 232 U. S. 14.
Dayton-Goose Creek Ry. *v.* U. S., 263 U. S. 456.

Commingling of Interstate and Intrastate Transactions

The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on, and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere.

Minnesota Rate Cases, 230 U. S. 352.

To Provide Review of Action of Commission

Congress may provide for the review of the action of commissions or boards created by it exercising quasi judicial powers for the transfer of their proceedings and decisions to judicial tribunals for determination *de novo*. In an action brought upon a reparation order of the Interstate Commerce Commission, its findings and orders are *prima facie* evidence of the facts therein stated, and the conclusions of the commission on questions of fact are not reviewable by the courts.

Stephens *v.* Cherokee Nation, 174 U. S. 445.
Pennsylvania R. Co. *v.* Weber, 257 U. S. 85.
Louisiana, etc., R. Co. *v.* U. S., 257 U. S. 114.
I. C. C. *v.* Delaware, etc., R. Co., 220 U. S. 235.
New England Divisions Case, 261 U. S. 184.
Chicago Junction Case, 264 U. S. 258.

An order of the commission is not invalidated by the mere admission as evidence of matter which in judicial proceedings would be incompetent. But a finding without evidence is beyond the power of the commission. Reports of carriers on the commission's files can not be treated as evidence when not introduced as such in a proceeding which, though initiated by the commission primarily to protect the public interest, may result in an order in favor of one carrier as against another.

U. S. *v.* Abilene & So. Ry. Co., 265 U. S. 274.

To Enact Criminal Laws

The power to regulate commerce includes the power to regulate navigation, as connected with the commerce with foreign nations and among the States. It does not stop at the mere boundary line of a State; nor is it confined to acts done on the water or in the necessary course of the navigation thereof. It extends to such acts, done on land, which interfere with, obstruct, or prevent the due exercise of the power to regulate commerce and navigation with foreign nations and among the States. Any offense which thus interferes with, obstructs, or prevents such commerce and navigation, though done on land,

may be punished by Congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers.

U. S. *v.* Coombs, 12 Pet. 78.

To Grant Franchises

Under this clause Congress has authority to grant franchises authorizing corporations to construct national highways and bridges from State to State.

California *v.* Central Pac. R. Co., 127 U. S. 39.

Over Railroad Ferries

The inclusion of railroad ferries in the interstate commerce act is such an extension of the Federal authority over ferries upon a navigable river forming the boundary between two States as to invalidate any regulation under State authority of the rates to be charged for the interstate ferriage of persons, although such regulation relates only to persons other than railroad passengers.

New York Cent., etc., R. Co. *v.* Hudson County, 227 U. S. 248.

Over Bridges Across Navigable Streams

When Congress declares a bridge across a navigable river of the United States to be an unlawful structure, no legislation of a State can make it lawful. The States may authorize all structures over navigable waters which may either impede or improve navigation, in the absence of Federal legislation, but when Congress has legislated its action is conclusive. The Federal laws for the enrollment and licensing of coasting vessels are such as prohibit a State from impeding navigation by the erection of a bridge.

Bridge Co. *v.* U. S., 105 U. S. 475.
Willamette Iron Bridge Co. *v.* Hatch, 125 U. S. 1.
Gilman *v.* Philadelphia, 3 Wall. 713.
Pound *v.* Turck, 95 U. S. 459.
Wisconsin *v.* Duluth, 96 U. S. 379.
Escanaba Co. *v.* Chicago, 107 U. S. 678.
Monongahela Brdg. *v.* U. S., 216 U. S. 177.
Luxton *v.* North River Brdg. Co., 153 U. S. 530.
Pennsylvania *v.* Wheeling, etc., Brdg. Co., 18 How. 429.
Union Brdg. Co. *v.* U. S., 204 U. S. 364.
Clinton Bridge, 10 Wall. 462.

Over Railroads

By virtue of its power to regulate commerce Congress may enact laws for the safeguarding of the persons and property that are transported (by railroad) in that commerce and of those who are employed in transporting them; may authorize the construction of railroads; may grant rights of way; may legislate as to rates and charges; prevent discrimination in rates; may abrogate free passes given by a railroad in compromise of a claim for damages, etc.

Baltimore, etc., R. Co. *v.* I. C. C., 221 U. S. 612.
California *v.* Central Pac. R. Co., 127 U. S. 39.
Cherokee Nation *v.* Southern Kansas R. Co., 135 U. S. 642.

I. C. C. *v.* Detroit, etc., R. Co., 67 U. S. 642.
Texas, etc., R. Co. *v.* U. S., 205 Fed. 380.
Inter-Mountain Cases, 234 U. S. 476.
Louisville, etc., R. Co. *v.* Mottley, 219 U. S. 467.

Congress may prohibit interstate carriers from discriminating against localities to which they bill traffic, though not reached by their own lines.

St. Louis, etc., R. Co. *v.* U. S., 245 U. S. 136.

In Central R. Co. *v.* U. S., 257 U. S. 247, the court said: "What Congress sought to prevent by that section (sec. 3 of interstate commerce act) * * * was not differences between localities in transportation rates, * * * but unjust discrimination between them by the same carrier" (p. 259).

Over Contracts

Interstate commerce which is subject to the control of Congress embraces the widest freedom, including, as a matter of course, the right to make all contracts having a proper relation to the subject.

Rosenberger *v.* Pacific Exp. Co., 241 U. S. 48.
Richmond, etc., R. Co. *v.* Patterson, 169 U. S. 311.
Missouri, etc., R. Co. *v.* McCann, 174 U. S. 587.
Chicago, etc., R. Co. *v.* Solan, 169 U. S. 134.

The Carmack amendment to the interstate commerce act supersedes State statutes invalidating contracts limiting recovery for loss or injury to goods in transportation to an agreed or declared value.

Atchison, etc., R. Co. *v.* Harold, 241 U. S. 371.
Chicago, etc., R. Co. *v.* Cramer, 232 U. S. 490.
Adams Exp. Co. *v.* Croninger, 226 U. S. 491.
Chicago, etc., R. Co. *v.* Miller, 226 U. S. 513.
Missouri, etc., R. Co. *v.* Harriman, 227 U. S. 657.
Chicago, etc., R. Co. *v.* Latta, 226 U. S. 519.
Atchison, etc., R. Co. *v.* Robinson, 233 U. S. 173.

The power to regulate commerce was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating State legislation; it was never intended that the power should be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to such intercourse.

Railroad Co. *v.* Richmond, 19 Wall. 588.

Where a contract affects interstate commerce only incidentally and not directly, the fact that it was not designed or intended to affect such commerce is simply an additional reason for holding the contract valid and not touched by an act of Congress. Otherwise, the design prompting the execution of a contract pertaining to and directly affecting, and more or less regulating, interstate commerce is of no importance.

Addyston Pipe, etc., Co. *v.* U. S., 175 U. S. 234.

Congress has the power, with regard to interstate commerce and in the course of regulating it in the case of railroad corpora-

tions, to say that no contract or combination shall be legal which shall restrain trade and commerce by shutting out the operation of the general law of competition.

U. S. *v.* Joint Traffic Assn., 171 U. S. 569.

Contracts, combinations, or conspiracies to control domestic enterprise in manufacture, agriculture, mining, production in all its forms, or to raise or lower the prices or wages, might unquestionably tend to restrain external as well as domestic trade, but the restraint would be an indirect result, however inevitable and whatever its extent, and such result would not necessarily determine the object of the contract, combination, or conspiracy.

U. S. *v.* Knight Co., 156 U. S. 16.

Over Rules by Which Commerce Shall Be Governed

Congress has the power to establish rules by which interstate and international commerce shall be governed, and, by the anti-trust act, has prescribed the rule of free competition among those engaged in such commerce.

Northern Securities Co. *v.* U. S. (193 U. S. 337), in which the court said:

Whether the free operation of the normal laws of competition is a wise and wholesome rule for trade and commerce is an economic question which this court need not consider or determine. Undoubtedly there are those who think that the general business interests and prosperity of the country will be best promoted if the rule of competition is not applied. But there are others who believe that such a rule is more necessary in these days of enormous wealth than it ever was. * * * Congress has in effect recognized the rule of free competition by declaring illegal every combination or conspiracy in restraint of interstate and international commerce. As in the judgment of Congress the public convenience and the general welfare will be best subserved when the natural laws of competition are left undisturbed by those engaged in interstate commerce, and as Congress has embodied that rule in a statute, that must be for all the end of the matter, if this is to remain a government of laws and not of men.

It was held in U. S. *v.* Coffee Exchange, 263 U. S. 611, that—

Sales of a commodity upon an exchange, under contracts calling for actual delivery in the future but which in practice are cleared by the processes called "matching" and "ringing," serve useful and legitimate purposes, and are legal when not abused for illegal ends, and that Congress has the power to provide rules and regulations for the conduct of such exchanges to prevent abuse of their lawful functions.

Over Safety Appliances

Congress having determined to regulate the use of cars running on interstate railroads so as to provide for the use of certain safety appliances on such cars, has by such acts taken jurisdiction thereof.

Southern R. Co. *v.* U. S., 222 U. S. 20.
Missouri, etc., R. Co. *v.* Castle, 224 U. S. 541.
Southern R. Co. *v.* Indiana, 236 U. S. 439.
Texas, etc., R. Co. *v.* Rigsby, 241 U. S. 33.

Over Hours of Service

Congress has so acted upon the subject as to preclude a State from making or enforcing as to interstate employees a local regulation limiting hours of labor.

Northern Pac. R. Co. *v.* Washington, 222 U. S. 370.
Erie R. Co. *v.* New York, 233 U. S. 671.
Baltimore, etc., R. Co. *v.* I. C. C., 221 U. S. 612.
Wilson *v.* New, 243 U. S. 332.
Ellis *v.* U. S., 206 U. S. 246.
U. S. *v.* Garbish, 222 U. S. 257.
Missouri, etc., R. Co. *v.* U. S., 231 U. S. 112.

Over Liability for Injuries to Employees

The laws of the several States, in so far as they cover the same field, were superseded by the employers' liability act, but the original act of June 11, 1906, was held invalid as being a regulation of intrastate as well as of interstate commerce in Employers' Liability cases (207 U. S. 463). It had been held valid in Lancer *v.* Anchor Line (155 Fed. 433); Kelley *v.* Great Northern R. Co. (152 Fed. 211); Plummer *v.* Northern Pac. R. Co. (152 Fed. 206); and Spain *v.* St. Louis, etc., R. Co. (151 Fed. 522).

In the exertion of its power over interstate commerce Congress may regulate the relations of common carriers and their employees while both are engaged in such commerce, subject to the limitations prescribed in the Constitution and to the qualification that the particulars in which those relations are regulated must have a real or substantial connection with the interstate commerce in which the carriers and their employees are engaged.

Second Employers' Liability Cases, 223 U. S. 1.
Illinois Cent. R. Co. *v.* Behrens, 233 U. S. 473.
St. Louis, etc., R. Co. *v.* Seale, 229 U. S. 156.
Pedersen *v.* Delaware, etc., R. Co., 229 U. S. 146.

The act of 1906 was held valid and enforceable as to carriers and their employees within the District of Columbia and the Territories, in El Paso, etc., R. Co. *v.* Gutierrez (215 U. S. 87).

The liability acts were held to be limited to common carriers "by railroad" and not applicable to independent steamship lines, in Southern Pac. Co. *v.* Jensen (244 U. S. 205).

The section of the act of 1908, declaring any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any carrier to exempt itself from liability created by the act, to be void, is valid.

Philadelphia, etc., R. Co. *v.* Schubert, 224 U. S. 603.

In connection with the Second Employers' Liability Cases see also—

St. Louis, etc., R. Co. *v.* Hesterly, 228 U. S. 702.
Seaboard, etc., R. Co. *v.* Horton, 233 U. S. 492.
Toledo, etc., R. Co. *v.* Slavin, 236 U. S. 454.
Delaware, etc., R. Co. *v.* Yurkonis, 238 U. S. 439.
Missouri, etc., R. Co. *v.* Wulf, 226 U. S. 570.
Taylor *v.* Taylor, 232 U. S. 363.

Wabash R. Co. *v.* Hayes, 234 U. S. 86.
New York Central R. Co. *v.* Winfield, 244 U. S. 147.
Lehigh Valley R. Co. *v.* Barlow, 244 U. S. 183.
North Carolina R. Co. *v.* Lee, 260 U. S. 16.

Over Telegraphs and Telephones

A telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods. Both companies are instruments of commerce, and their business is commerce itself. They do their transportation in different ways, and their liabilities are in some respects different, but they are both indispensable to those engaged to any considerable extent in commercial pursuits.

A State can not grant the exclusive right to maintain telegraph lines so as to exclude from its limits a corporation organized under an act of Congress.

The subject of the hours of labor of employees of interstate railways using the telegraph or telephone in connection with trains is so far removed from State legislation by the hours of service act as to invalidate a State law on the same subject.

Western Union Tel. Co. *v.* Texas, 105 U. S. 464.
Pensacola Tel. Co. *v.* Western Union Tel. Co., 96 U. S. 1.
Leloup *v.* Mobile, 127 U. S. 646.
Essex *v.* New England Tel. Co., 239 U. S. 313.
Western Union Tel. Co. *v.* Pennsylvania R. Co., 195 U. S. 540.
Erie R. Co. *v.* New York, 233 U. S. 671.

Delegation of Power

To District of Columbia

Congress can not delegate to the District of Columbia power to regulate commerce between the District and the States.

Stoutenburgh *v.* Hennick, 129 U. S. 141.

To Interstate Commerce Commission

Congress has authority under its sovereign and exclusive power to regulate commerce, to create a commission for the purpose of supervising, investigating, and reporting upon matters or complaints connected with or growing out of interstate and foregn commerce. The powers and duties of the commission are prescribed by Congress, and it performs for the Federal Government, in respect to that commerce committed by the Constitution to the exclusive care and jurisdiction of Congress, the same functions which State commissioners exercise in respect to local or intrastate commerce, over which the States appointing them have exclusive control. Their validity in their respective spheres of operation stands upon the same footing.

Kentucky, etc., Brdg. Co. *v.* Louisville, etc., R. Co., 37 Fed. 567.
I. C. C. *v.* Brimson, 154 U. S. 447.
U. S. *v.* Great Northern R. Co., 157 Fed. 288.
Missouri, etc., R. Co. *v.* I. C. C., 164 Fed. 645.
St. Louis, etc., R. Co. *v.* Taylor, 210 U. S. 281.
Smith *v.* I. C. C., 245 U. S. 33, 47.
Jones *v.* I. C. C., 245 U. S. 48.

As to the effect of the delegation of power to the Interstate Commerce Commission, see Missouri Pac. R. Co. *v.* Larabee (211 U. S. 612), in which it was said that—

> Congress has already acted, has created the Interstate Commerce Commision, and given to it a large measure of control over interstate commerce. But the fact that Congress has entrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce, and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the State in these incidental matters. A mere delegation by Congress to the commission of a like power has no greater effect, and does not of itself disturb the authority of the State. It is not contended that the commission has taken any action in respect to the particular matters involved. It may never do so, and no one can in advance anticipate what it will do when it acts. Until then the authority of the State in merely incidental matters remains undisturbed.

See also—

Missouri, etc., R. Co. *v.* Harris, 234 U. S. 412.

The powers and duties of the commission have been greatly enlarged, since the above decisions, by amendments to the act to regulate commerce, and by the transportation act, q. v. See also "Interstate Commerce" (4 Fed. Stat. Ann. [2d ed.] p. 331).

The part of the act of Congress of August 24, 1912, known as the Panama Canal act, especially section 11, which amends section 5 of the interstate commerce act of 1887, and which, in effect, provides that even if the Interstate Commerce Commission shall find that competition, or the possibility of competition, exists between a particular carrier by water under common control, the service by water may still be continued if the commission shall be of opinion that the convenience and commerce of the people will be promoted thereby, is not invalid as delegating a legislative function to the commission.

Lehigh Valley R. Co. *v.* U. S., 234 Fed. 682.

To States

In general.—It is within the power of Congress to permit the exercise of the power to regulate interstate commerce by the States. In sections 4278 and 4279 of the Revised Statutes of the United States, relating to nitroglycerine and other explosives, Congress gives directly to any State, Territory, District, city, or town the right to prohibit the introduction of such substances into its limits for sale, use, or consumption therein.

Ex parte Jervey, 66 Fed. 960.

Imported liquors.[1]—In pursuance of the decision in Leisy *v.* Hardin (135 U. S. 100), and in recognition of the conditions in certain localities, Congress provided, in the act of August 8, 1890 (26 Stat. 313):

> That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein shall, upon arrival in such State or

[1] See also "Intoxicating Liquors," pp. 174, 605, 685, 734, and Amendment 18, p. 747.

Territory, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

The act cited above was held to be a valid and constitutional exercise of the legislative power conferred upon Congress in In re Rahrer (140 U. S. 561), in which the court said:

Congress has not attempted to delegate the power to regulate commerce, or to exercise any power reserved to the States, or to grant a power not possessed by the States, or to adopt State laws. It has taken its own course and made its own regulation, applying to these subjects of interstate commerce one common rule, whose uniformity is not affected by variations in State laws in dealing with such property. * * * No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

See also—

Laughter *v.* M'Lain, 229 Fed. 280.
Evansville Brewing Assn. *v.* Excise Commrs., 225 Fed. 204.
Rhodes *v.* Iowa, 170 U. S. 420.

A State may prohibit the shipment into the State to agents of the shipper of intoxicating liquors for the purpose of being stored and sold therein in original packages.

Vance *v.* Vandercook Co. (170 U. S. 451), in which the court said:

But the weight of the contention is overcome when it is considered that the interstate commerce clause of the Constitution guarantees the right to ship merchandise from one State into another and protects it until the termination of the shipment by delivery at the place of consignment; and this right is wholly unaffected by the act of Congress which allows State authority to attach to the original package before sale but only after delivery.

See also—

Pabst Brewg. Co. *v.* Crenshaw, 198 U. S. 17.
Phillips *v.* Mobile, 208 U. S. 472.
Scott *v.* Donald, 165 U. S. 58.
Louisville, etc., R. Co. *v.* Cook Brewg. Co., 223 U. S. 70.
Adams Exp. Co. *v.* Kentucky, 214 U. S. 218; 238 U. S. 190; 206 U. S. 129.
Delamater *v.* South Dakota, 205 U. S. 93.
Kirmeyer *v.* Kansas, 236 U. S. 568.
Foppiano *v.* Speed, 199 U. S. 501.

The Webb-Kenyon Act of March 1, 1913, which in substance prohibits the shipment or transportation from one State to another of intoxicating liquors in violation of any law of such State, is a valid exercise of the power of Congress.

Clark Distilling Co. *v.* Western Md. R. Co., 242 U. S. 326.
West Virginia *v.* Adams Exp. Co., 219 Fed. 794.

Commerce with Foreign Nations

In General

The power to regulate commerce with foreign nations, being an enumerated power, is complete in itself, acknowledging no

limitations except those prescribed in the Constitution, and authorizing Congress, in the exercise of the police power, to exclude any particular goods from importation. As was said in the State Tonnage Tax Cases (12 Wall. 214):

It is well settled law that the word "commerce," as used in the Constitution, comprehends navigation, and that it extends to every species of commercial intercourse between the United States and foreign nations and to all commerce in the several States, except such as is completely internal.

See also—
Brown *v.* Maryland, 12 Wheat. 419.
Buttfield *v.* Stranahan, 192 U. S. 470.
Veazie *v.* Moor, 14 How. 574.

Commerce with foreign nations means trade and intercourse. It means commercial intercourse between nations and parts of nations in all its branches.

Henderson *v.* New York, 92 U. S. 270.
U. S. *v.* Holliday, 3 Wall. 417.
The Brig *Wilson v.* U. S., 1 Brock. (U. S.) 423.
Philadelphia, etc., S. S. Co. *v.* Pennsylvania, 122 U. S. 326.
Gibbons *v.* Ogden, 9 Wheat. 193.

Shipment of freight under local bill of lading from interior point in Louisiana to New Orleans, to be delivered to the shipper's or consignee's order, but intended for export, held foreign commerce, governed as to the intrastate transportation in Louisiana by the tariffs on file with the Interstate Commerce Commission.

Louisiana *v.* Texas, etc., R. Co., 229 U. S. 336.
Texas, etc., R. Co. *v.* Sabine Tram Co., 227 U. S. 111.

Foreign Vessels Entering United States Ports

Congress may unquestionably, under the commerce clause, prohibit any foreign ship from entering our ports, which, in its construction or equipment, uses any improvement patented in this country, or may prescribe the terms and regulations upon which such vessel shall be allowed to enter.

Brown *v.* Duchesne, 19 How. 198.

The objection that a vessel owned, possessed, manned, and operated by a foreign State, but engaged in ordinary commerce under charter to a private trader, is immune to libel for services and supplies, can not be raised by her master who, although a naval officer is not functioning as such, and is not shown to have authority to represent his sovereign in making the objection.

The "Gul Djemal," 264 U. S. 90.

Exclusion of Aliens

Under this clause Congress has full power over the exclusion of aliens. It may exclude some and admit others, and has the right to make that exclusion effective by punishing those who assist in introducing aliens in violation of its prohibition.

Lees *v.* U. S., 150 U. S. 480.
Lem Moon Sing *v.* U. S., 158 U. S. 547.

Lapina *v.* Williams, 232 U. S. 78.
Bugajewitz *v.* Adams, 228 U. S. 585.
Japanese Immigrant Case, 189 U. S. 97.

The right to exclude undesirable persons from coming to the United States is as fundamental as the right to receive desirable ones. The Nation can protect itself as well as benefit itself. The power of excluding foreigners being an incident of sovereignty belonging to the Government as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when in its judgment the interests of the country require it, cannot be surrendered by the treaty-making power.

Chinese Exclusion Case, 130 U. S. 581.

On the grounds of public policy and by congressional enactment, the United States can prevent aliens or classes of aliens from landing within its borders, and can also expel aliens from the territory of the United States, and can, that such decree may be made effectual, devolve the power and duty of identifying and arresting persons embraced in such decree, and causing their deportation, upon the executive or subordinate officers of the Government. But when Congress chooses to exercise such a policy by subjecting the persons of those whom it would exclude from the United States to infamous punishment at hard labor, or by confiscating their property, such legislation should provide for a judicial trial in order to be constitutional.

Wong Wing *v.* U. S., 163 U. S. 228.
Fong Yue Ting *v.* U. S., 149 U. S. 698.
Zakonaite *v.* Wolf, 226 U. S. 272.
Head Money Cases, 112 U. S. 580.
Legal Tender Cases, 12 Wall. 457.

This power is vested in the National Government, to which the Constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the Government and may be exercised either through treaties or through Congress.

Nishimura Ekiu *v.* U. S., 142 U. S. 651.

This power is well established, whether it be based on the inherent power of sovereignty or upon the commerce clause.

Turner *v.* Williams, 194 U. S. 279.

But Congress may not control all the dealings of citizens with resident aliens.

Keller *v.* U. S., 213 U. S. 138.

Immigration

State law requiring masters of vessels arriving at New York to make report of the names, etc., of foreign passengers, etc., is not an interference with foreign commerce.

New York *v.* Miln, 11 Pet. 102.

State law providing that no alien passengers shall be landed until the sum of $2 is paid to the boarding officer for each passenger so landing is repugnant to the Constitution and therefore void.

Passenger Cases, 7 How. 282.
See also—
Chy Lung *v.* Freeman, 92 U. S. 275.
People *v.* Compagnie Gen. Transatlantique, 107 U. S. 59.

Quarantine and Health Regulations

The expense of quarantine regulations cannot be raised by a tax on foreign-owned ships engaged in interstate or international commerce.

Peete *v.* Morgan, 19 Wall. 581.

No unconstitutional regulation of commerce is made by State law excluding healthy persons from a locality infested with a contagious disease, whether such persons come from within or without the State.

Compagnie Francaise, etc., *v.* Louisiana, 186 U. S. 380.

Exclusion of Imports

Congress, by an exertion of its power to regulate foreign commerce, has the authority to forbid merchandise carried in such commerce from entering the United States, and to establish standards of quality for such commodities as are allowed to enter.

The *Abby Dodge*, 223 U. S. 166.
Buttfield *v.* Stranahan, 192 U. S. 493.

Game Taken in Foreign Countries

Foreign commerce is not unconstitutionally regulated by New York law under which the possession of game within the State during the closed season is forbidden though the game may have been lawfully taken in foreign countries.

Silz *v.* Hesterberg, 211 U. S. 31.

Counterfeiting Notes of Foreign Banks

Congress, under its authority to define and punish offenses against the laws of nations and to regulate commerce with foreign nations, may provide for punishing as a crime the counterfeiting within the United States of the notes of foreign banks, although such notes are not the issue of a foreign government.

U. S. *v.* Arjona, 120 U. S. 479.

Commerce among the Several States

Definition and Nature

Commercial intercourse is an element of commerce which comes within the regulating power of Congress, and commerce among the States consists of intercourse and traffic between their citizens, and includes the purchase, sale, and exchange of commodities, as well as their transportation.

Pensacola Tel. Co. *v.* Western Union Tel. Co., 96 U. S. 9.
Welton *v.* Missouri, 91 U. S. 280.
Gibbons *v.* Ogden, 9 Wheat. 1.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 203.
Addyston Pipe, etc., Co. *v.* U. S., 175 U. S. 241.
Rosenberger *v.* Pacific Exp. Co., 241 U. S. 48.

Transportation of persons as well as of property is commerce. Commerce not only includes traffic, or buying and selling, but all those means and methods of intercourse which are necessary to the commercial unity of the Nation. It includes the transportation, with all its means and facilities, not only of the property in which they deal, but of the persons of the people; the transmission of information from State to State, including telegraphic communication, and no doubt applies as well to the intangible forces now fast coming into use in the transmission of messages as to the visible wires that stretch in physical continuity from State to State. It makes no difference whether the passenger travels for business or pleasure, or whether the message is a friendly greeting or relates to a momentous business contract. All alike, in passing from State to State, come within the regulating powers vested in the National Congress.

Hoke *v.* U. S., 227 U. S. 308.
Second Employers' Liability Cases, 223 U. S. 1.
Kansas City *v.* McDonald, 175 S. W. 917.

The power to regulate interstate commerce is plenary, complete in itself, and may be exercised to its utmost extent, subject only to such limitations as the Constitution imposes; it was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating State legislation, but it was not intended that the power should be exercised so as to interfere with private contracts not designed when made to create impediments to such intercourse.

The Lottery Case, 188 U. S. 321.
Cummings *v.* Chicago, 188 U. S. 410.
Louisville, etc., R. Co. *v.* Mottley, 219 U. S. 467.
In re Rahrer, 140 U. S. 545.
The *Thomas Jefferson*, 10 Wheat. 428.
Railroad Company *v.* Richmond, 19 Wall. 584.

In the exercise of its power over interstate commerce, it is competent for Congress to remove all obstructions upon wharves, natural or artificial, to interstate traffic or the carrying of the mails.

In re Debs, 158 U. S. 564.

A carrier, by engaging in interstate commerce, does not thereby submit all its business affairs to the regulating power of Congress.

Employers' Liability Cases, 207 U. S. 463.

Congress has the power to regulate interstate commerce, to prevent favoritism, and to secure equal rights to all engaged in interstate trade, and Congress may control those who are conducting interstate commerce by holding them responsible for the intent and purposes of their agents.

New York Central, etc., R. Co. *v.* U. S., 212 U. S. 481.
Atlantic Coast Line *v.* Riverside Mills, 219 U. S. 186.
Hoke *v.* U. S., 227 U. S. 308.
Harriman *v.* I. C. C., 211 U. S. 407.

The power of Congress to regulate commerce extends only to the external commerce of the State, and has no application to commerce which is purely internal; the grant of power to Congress virtually denies the power to interfere with the internal trade and business of the separate States, except as a necessary and proper means of carrying into execution some other power expressly granted or vested.

Gibbons *v.* Ogden, 9 Wheat. 1.
U. S. *v.* Dewitt, 9 Wall. 41.
Lord *v.* Goodall, etc., S. S. Co., 102 U. S. 541.
Nicol *v.* Ames, 173 U. S. 509.
Illinois Cent. R. Co. *v.* McKendree, 203 U. S. 514.
Baltimore, etc., R. Co. *v.* I. C. C., 221 U. S. 612.
Southern R. Co. *v.* U. S., 222 U. S. 20.
The *Abby Dodge*, 223 U. S. 166.
Houston, etc., R. Co. *v.* U. S., 234 U. S. 342.
Illinois Cent. R. Co. *v.* Illinois, 245 U. S. 493.
Wisconsin *v.* Chicago, etc., R. Co., 257 U. S. 563.

Navigation

Commerce among the several States includes the navigation of public waters for the purpose of the transportation of persons and property. The word "commerce" is to be considered a generic term comprehending navigation or that a control over navigation is necessarily incidental to the power to regulate commerce, and not only gives Congress an unlimited power over the cargoes, but also enables that body to control the vehicles in which they are imported. The power to regulate navigation, however, is an implied power, and has been exercised as being necessarily implied.

In his concurring opinion in Gibbons *v.* Ogden, supra, Mr. Justice Johnson said (p. 229):

The power of Congress to regulate navigation is as inseparable from it as vital motion is from vital existence, and such power is not incidental to that of regulating commerce; it is the thing itself.

Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 203.
State Tonnage Tax Cases, 12 Wall. 214.
Henderson *v.* New York, 92 U. S. 270.
Gilman *v.* Philadelphia, 3 Wall. 724.
The Brig *Wilson v.* U. S., 1 Brock. (U. S.) 423.
Leovy *v.* U. S., 177 U. S. 632.
Escanaba Co. *v.* Chicago, 107 U. S. 678.

Instrumentalities of Commerce

Commerce embraces appliances necessarily employed in carrying on transportation by land and water; the power of Congress over commerce extends to all the instrumentalities of such commerce, and to every device that may be employed to interfere with the freedom of commerce.

Railroad Company *v.* Fuller, 17 Wall. 568.
Northern Securities Co. *v.* U. S., 193 U. S. 344, holding that Congress had the power to enact the antitrust act of July 2, 1890.

In Hopkins *v.* U. S. (171 U. S. 597) the court said:

Definitions as to what constitutes interstate commerce are not easily given so that they shall clearly define the full meaning of the term. We know from the cases decided in this court that it is a term of very large significance. It comprehends, as it is said, intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale, and exchange of commodities between the citizens of different States, and the power to regulate it embraces all the instruments by which such commerce may be conducted. But in all the cases which have come to this court there is not one which has denied the distinction between a regulation which directly affects and embarrasses interstate trade or commerce, and one which is nothing more than a charge for a local facility provided for the transaction of such commerce.

Interstate and foreign commerce, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation of persons and property, as well as purchase, sale, and exchange of commodities.

Mobile County *v.* Kimball, 102 U. S. 691.

Any regulation of the transportation of interstate commerce, whether it be upon the high seas, the lakes, the rivers, or upon railroads or other artificial channels of communication, affecting commerce, operates as a regulation of commerce itself.

Gibbons *v.* Ogden, 9 Wheat. 1.
Brown *v.* Maryland, 12 Wheat. 419.
Pennsylvania *v.* Wheeling, etc., Brdg. Co., 18 How., 421.
Almy *v.* California, 24 How. 169.
Wabash, etc., R. Co. *v.* Illinois, 118 U. S. 557.
Tennessee *v.* Pullman Co., 117 U. S. 51.

The sale and delivery of coal f. o. b. cars at the mine for transportation to purchasers in other States is interstate commerce.

Pennsylvania R. Co. *v.* Sonman, etc., Co., 242 U. S. 120.
Weeks *v.* U. S., 245 U. S. 618.
York Mfg. Co. *v.* Colley, 247 U. S. 21.

One who as agent of a nonresident principal takes orders on such principal for the purchase of goods held in such other State, and who when the goods are shipped to him receives and delivers them in the original packages to his customers, and receives from them the price, is engaged in interstate commerce.

Kehrer *v.* Stewart, 197 U. S. 60.
Standard, etc., Mfg. Co. *v.* U. S., 226 U. S. 20.
Crossman *v.* Lurman, 192 U. S. 189.
American Steel & Wire Co. *v.* Speed, 192 U. S. 500.
Armour Packing Co. *v.* Lacy, 200 U. S. 226.
Cheney Bros. Co. *v.* Massachusetts, 246 U. S. 147.

Defendant, a liquor dealer in New York, received from persons in Vermont, by telegraph and mail, express orders for liquors, which he filled by selecting the liquors and delivering them to an express company of New York for delivery in Vermont C. O. D. Held, that the transaction was one of interstate commerce.

O'Neil *v.* Vermont, 144 U. S. 323.

Transportation of freight and passengers from one State to another, or through more than one State, either by land or water, is interstate commerce.

Case of State Freight Tax, 15 Wall. 232.
Wabash, etc., R. Co. *v.* Illinois, 118 U. S. 557.

Transportation of a commodity wholly within one State to an agent for reshipment into another State is interstate commerce and not subject to State control.

The *Daniel Ball*, 10 Wall. 557.

Transportation of a commodity wholly within one State to a Gulf port, and thence carried to a foreign port under orders of the original consignee, is covered by the commerce clause and is beyond the purview of the State railroad commission.

Texas, etc., R. Co. *v.* Sabine Tram Co., 227 U. S. 111.

Business carried on in Kansas by a liquor dealer maintaining warehouse on the Missouri side of the Missouri River, filling orders for Kansas customers by deliveries in his own wagon or

by freight, held interstate business though such dealer is a citizen of Kansas.

Kirmeyer *v.* Kansas, 236 U. S. 568.
See also—
Ware & Leland *v.* Mobile County, 209 U. S. 405.
Banker Bros. *v.* Pennsylvania, 222 U. S. 210.
Purity Extract, etc., Co. *v.* Lynch, 226 U. S. 192.
Adams Exp. Co. *v.* Commonwealth, 206 U. S. 129.

Commerce Carried on by Corporations

The grant of power is general in its terms, making no reference to the agencies by which commerce may be carried on. It includes commerce by whomsoever conducted, whether by individuals or by corporations.

Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 204.
Paul *v.* Virginia, 8 Wall. 182.

In Crutcher *v.* Kentucky, 141 U. S. 57, the court said:

> To carry on interstate commerce is not a franchise or a privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities as a matter of convenience in carrying on their business can not have the effect of depriving them of such right unless Congress should see fit to interpose some contrary regulation on the subject.

Congress has visitatorial power over State corporations in the exercise of its power to regulate interstate commerce.

I. C. C. *v.* Goodrich Transit Co., 224 U. S. 194.

Transportation of Persons and Property

In general.—The transportation of persons and goods between different States is interstate commerce; freight carried from a point without the State to some point within the State, and freight carried from some point within that State to other States, is as much commerce among the States as that which passes entirely through a State.

Philadelphia, etc., S. S. Co. *v.* Pennsylvania, 122 U. S. 326.
Fargo *v.* Michigan, 121 U. S. 238.

The transportation of live stock from State to State is a branch of interstate commerce, and any specified rule or regulation in respect of such transportation, which Congress may lawfully prescribe or authorize and which may properly be deemed a regulation of such commerce, is paramount throughout the Union.

Reid *v.* Colorado, 187 U. S. 146.

The power to regulate or forbid the sale of a commodity after it has been brought into the State does not carry with it the right and power to prevent its introduction by transportation from another State.

Bowman *v.* Chicago, etc., R. Co., 125 U. S. 465.

The transportation of oil in pipe lines from one State to another is interstate commerce, and this is so though the oil transported belongs to the owner of the pipe lines, and is subject to the regulating power of Congress when the owner of the lines refuses to transport for others but purchases the oil from the producers and thus controls the business in the territory served by the lines.

Pipe Line Cases, 234 U. S. 548.
Eureka Pipe Line Co. *v.* Hallanan, 257 U. S. 265.
United Fuel Gas Co. *v.* Hallanan, 257 U. S. 277.

Street cars over interstate bridge.—The transportation of persons in street cars upon continuous and connecting tracks across a bridge between two States is interstate commerce.

South Covington, etc., R. Co. *v.* Covington, 235 U. S. 537.

State carriers forming interstate route.—Any carriage of goods which crosses a State line is interstate commerce; and the fact that transportation from one State to another is accomplished in whole or in part through the agency of independent and unrelated carriers up to and from the State line does not affect the character of the transaction in this respect. For whenever an article destined to a place without the State is shipped or started therefor, it becomes the subject of interstate commerce, and the carriers employed in the transportation thereof, although neither of them pass from one State to the other, are subject, as instruments of such commerce, to national legislation and control. A steamer plying between two points within a State is engaged in interstate commerce so far as she is employed in transporting goods destined for other States.

Ex parte Koehler, 30 Fed. 867.
Norfolk, etc., R. Co. *v.* Pennsylvania, 136 U. S. 114.
The *Daniel Ball*, 10 Wall. 557.

Local part of interstate shipment.—Where an interstate carload shipment is billed on a through bill of lading, with draft attached, to a certain point, and the through bill is exchanged by the consignee for another bill consigning the same car to his own order at another point in the same State, and the circumstances show that the interstate shipment should not terminate at first point to which the car was billed, but that it should move on as the result of such direction as might be given while it was in transit by the consignee, the local part of the transportation formed part of the whole interstate transaction.

Atchison, etc., R. Co. *v.* Harold, 241 U. S. 371.
Baltimore, etc., R. Co. *v.* Settle, 260 U. S. 166.

Railroads which share in an agreed rate on traffic to a certain point, and in a precisely equal rate on traffic to an intermediate point, although on traffic to this point there is added an amount equal to the local rate from that point to the end of the longer

haul, which additional exaction is received by the local road alone, are to be regarded as constituting a continuous line, subject to the act to regulate commerce.

Louisville, etc., R. Co. *v.* Behlmer, 175 U. S. 648.

Separable part of interstate haul.—Where there has been an interstate shipment, and the shipper has instructed the terminal carrier to deliver the shipment to another carrier for transportation to another point within the same State, the last separable part of the journey is not an interstate one, notwithstanding it had been the purpose of the shipper to reship from the original terminal point.

Gulf, etc., R. Co. *v.* Texas, 204 U. S. 403.

Route between points within a State passing through adjoining State.—Transportation between two points in a State, when a large part of the route is on a loop outside the State, is interstate commerce, and the action of the State commission fixing the rates for continuous transportation over such route is invalid.

Hanley *v.* Kansas City, etc., R. Co., 187 U. S. 619.
Sternberger *v.* Cape Fear, etc., R. Co., 7 S. E. 836.
State *v.* Chicago, etc., R. Co., 41 N. W. 1047.

The mere passage over the soil of another State in the carriage of freight and passengers between two points in one State does not render that business foreign which is domestic, and State taxation on receipts for such transportation is not open to constitutional objection.

Lehigh Valley R. Co. *v.* Pennsylvania, 145 U. S. 202.

See Hanley *v.* Kansas City, etc., R. Co., supra, in which the court said that the Lehigh Valley case was one of a tax and was distinguished expressly from an attempt by a State directly to regulate the transportation while outside its borders.

See also Ewing *v.* Leavenworth (226 U. S. 464), as to an ordinance imposing a tax on the business of express companies, as applied to shipments between two points within the State, passing over the territory of an adjoining State.

Moving goods from platform to freight warehouse.—Moving goods shipped from a point without the State, from a platform at the depot to the freight warehouse, is a part of interstate transportation.

Rhodes *v.* Iowa, 170 U. S. 412.

Accommodations for passengers of different races.[1]—Whether interstate passengers of one race should, in any portion of their journey, be compelled to share their cabin accommodations with

[1] See also "Race distinctions," under Amendment 14, p. 725.

passengers of another racei s a question of interstate commerce and to be determined by Congress alone.

Louisville, etc., R. Co. *v.* Mississippi, 133 U. S. 590.
McCabe *v.* Atchison, etc., R. Co., 235 U. S. 151.
Chesapeake, etc., R. Co. *v.* Kentucky, 179 U. S. 388.

In Chiles *v.* Chesapeake, etc., R. Co. (218 U. S. 71), in which a colored passenger riding on a through ticket from Washington, D. C., to Lexington, Ky., was required by the railway company, when he changed trains at Ashland, Ky., to go into a car set apart exclusively for colored people, the State requiring all railroads to provide separate accommodations for white and colored passengers, the railroad company contended that it had not acted under the State statute but had adopted the regulation under its common-law right to make reasonable regulations for the conduct of its business, and the court declined to pass upon the validity of the statute and held that the common-law rule allowing railroads to make reasonable regulations were not a burdensome regulation of interstate commerce. The court further held that the regulation in question was a reasonable one for the company to make.

In Hall *v.* De Cuir (95 U. S. 485), the court held that a statute of Louisiana requiring interstate carriers to permit negroes and whites to intermingle freely among each other in all parts of their trains or boats was invalid.

As was said by Chaplin, in his Principles of the Federal Law (sec. 182):

Mere classification of persons, by race or color, not being in and of itself violative of equal protection of the laws, Congress has, in the field of suprastate commerce, power of such classification. A State has no power to this effect in suprastate commerce but the matter is of exclusive congressional competency. Congress, if not having taken affirmative action in this field, leaves the matter to be governed by the common-law principles governing common carriers—that is to say, leaves carriers free, in suprastate transit, to make such classification or not, at their pleasure.

In South Covington, etc., R. Co. *v.* Kentucky (252 U. S. 399), it was held that a State law requiring interurban railroad companies to supply separate accommodations for white and colored passengers, and punishing failure to do so, was not an unconstitutional burden on interstate commerce as applied to such railroads.

Use of local rates or bills of lading as between connecting carriers.—When goods shipped under a through bill of lading from a point in one State to a point in another are received in transit by a State common carrier, under a conventional division of the charges such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce.

Cincinnati, etc., R. Co. *v.* I. C. C., 162 U. S. 193.
Baer Bros. *v.* Denver, etc., R. Co., 233 U. S. 479.

Communication by Telegraph and Telephone

Communication by telegraph is commerce, as well as in the nature of postal service, and if carried on between different States it is interstate commerce and directly within the power of regulation conferred upon Congress and free from the control of State regulations, except such as are strictly of a police character.

Leloup *v.* Mobile, 127 U. S. 645.
Western Union *v.* Commercial Milling Co., 218 U. S. 406.
Western Union *v.* James, 162 U. S. 654.
Western Union *v.* Alabama, 132 U. S. 473.
Western Union *v.* Pendleton, 122 U. S. 356.
Pensacola Tel. Co. *v.* Western Union, 96 U. S. 9.

A telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods. Both companies are instruments of commerce and their business is commerce itself. A State can not prevent an interstate telegraph company from doing business in it. A statute of Texas provided that every chartered telegraph company doing business in that State should pay a tax for every message sent. The validity of this law was sustained by the Supreme Court of Texas, but the Supreme Court of the United States reversed that judgment and held the act unconstitutional "so far as it included the tax on messages sent out of the State for the Government on public business." But that portion of the statute which levied a tax on messages sent by private parties and not by the agents of the Government from one place to another within the State was held to be constitutional.

Telegraph Co. *v.* Texas, 105 U. S. 461 (reversing 55 Tex. 314).

The rules applicable to telegraph companies apply alike to telephone companies. When their lines run from one State into another they are carriers of interstate commerce.

Delaware, etc., Co. *v.* Delaware, 50 Fed. 677.
Muskogee Nat. Tel. Co. *v.* Hall, 118 Fed. 382.
Central Union Tel. Co. *v.* State, 19 N. E. 604.

But see Richmond *v.* Telephone Co. (174 U. S. 777), in which the court said:

If Congress desires to extend the provisions of the act of 1866 to companies engaged in the business of electrically transmitting articulate speech—that is, to companies popularly known as telephone companies, and never otherwise designated in common speech—let it do so in plain words. It will be time enough when such legislation is enacted to consider any questions of constitutional law that may be suggested by it.

New York stock quotations furnished by telegraph to subscribers in Massachusetts held interstate commerce.

Western Union *v.* Foster, 247 U. S. 105.

In 1910, by amendment to the act to regulate commerce, the jurisdiction of the commission was extended to telegraph and

telephone companies, and it was empowered to suspend advances in rates.

Handling and Slaughtering Animals

When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce.

Swift *v.* U. S., 196 U. S. 398.

The Kansas City Live Stock Exchange is conducted by a board of directors at the Kansas City Stock Yards, which are situated partly in Missouri and partly in Kansas; substantially all of the business tranacted in the matter of receiving, buying, selling, and hadling their live stock at Kansas City is carried on by the members of the exchange as commission merchants, and large amounts of live stock are shipped from other States; when this stock is received at the stock yards it is sold by the members of the exchange to the various packing houses in Kansas City, Mo., and Kansas City, Kans., and it is also sold for shipment to various other markets in other States. It was held that the business thus conducted is not interstate commerce.

Hopkins *v.* U. S., 171 U. S. 578, wherein the court said that there is a distinction between a regulation which directly affects and embarrasses interstate trade or commerce and one which is nothing more than a charge for a local facility provided for the transaction of such commerce. See Anderson *v.* U. S., 171 U. S. 604.

Manufacture and Sale of Goods

In general.—Where the contract is for the sale of the article and for its delivery in another State the transaction is one of interstate commerce, although the vendor may have also agreed to manufacture it in order to fulfil his contract of sale.

Addyston Pipe, etc., Co. *v.* U. S. (175 U. S. 246), in which case the court said:

It is almost needless to add that we do not hold that every private enterprise which may be carried on chiefly or in part by means of interstate shipments is therefore to be regarded as so related to interstate commerce as to come within the regulating power of Congress. Such enterprises may be of the same nature as the manufacturing of refined sugar in the Knight case (156 U. S. 1)—that is, the parties may be engaged as manufacturers of a commodity which they thereafter intend at some time to sell, and possibly to sell in another State; but such sale we have already held is an incident to and not the direct result of the manufacture, and so is not a regulation of, or an illegal interference with, interstate commerce.

See also—

Butler Bros. Shoe Co. *v.* U. S. Rubber Co., 156 Fed. 1.

The sale of coal f. o. b. cars at the mine, the cars when loaded to be promptly forwarded to purchasers in other States, is interstate commerce.

Pennsylvania R. Co. *v.* Sonman, etc., Co., 242 U. S. 120.

A shipment of merchandise C. O. D. from one State into another constitutes interstate commerce, as the right of parties to make a contract in another State than that of the residence of the purchaser, for the sale and purchase of merchandise, and in doing so to fix by agreement the time when, and the condition on which, the completed title should pass, is beyond question.

American Exp. Co. *v.* Iowa, 196 U. S. 143.
Adams Exp. Co. *v.* Iowa, 196 U. S. 147.

Delivery by agent after breaking bulk.—The soliciting of orders by an agent of a nonresident principal, to be filled by putting up the objects of the several orders in distinct packages and forwarding them to the agent for delivery, each package being labeled for the customer, except that in the case of one class of goods, brooms, they were tagged and marked like the other articles, according to the number ordered, but then tied together into bundles of about a dozen, and wrapped up conveniently for shipment, is interstate commerce, and a municipal ordinance imposing a license fee for engaging in such business is void.

Rearick *v.* Pennsylvania, 203 U. S. 507.

Transactions between manufacturing companies in one State, through agents, with citizens of another, constitute a large part of interstate commerce.

Caldwell *v.* North Carolina, 187 U. S. 632.

Leases.—When an act of Congress refers specifically to leases of chattels as well as to their sale in interstate commerce, whatever doubt there may be as to the validity of the statute will be resolved in favor of sustaining the exercise of the power of Congress over such subjects.

When a corporation with millions of capital, doing an annual business amounting to millions of dollars, sees proper to conduct its business by only leasing its chattels, instead of selling them, it is as much engaged in commerce as if it sold them outright.

U. S. *v.* United Shoe Mach. Co. 234 Fed. 127.

Subjects of Regulation by Congress

In general.—The commerce power embraces all instruments by which commerce may be carried on, and all the immediate vehicles and agents for all purposes, as well as the articles carried, and negotiations leading up to interstate and foreign commerce. The powers of Congress are not confined to instrumentalities known when the Constitution was adopted, but they keep pace

with and adapt themselves to new developments, and what is an article of commerce is to be determined by usages of the commercial world.

Welton *v.* Missouri, 91 U. S. 280.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 204.
Schollenberger *v.* Pennsylvania, 171 U. S. 24.
Leloup *v.* Mobile, 127 U. S. 646.
Pensacola Tel. Co. *v.* Western Union, 96 U. S. 9.
In re Debs, 158 U. S. 581.
Bowman *v.* Chicago, etc., R. Co., 125 U. S. 501.

Persons.—Persons are subject to the commerce power when they conduct commerce or are employed by others who conduct it or when they are carried as passengers. So Congress may prescribe rules for the government of pilots and fix their qualifications.

Cooley *v.* Philadelphia, 12 How. 316.
Passenger Cases, 7 How. 282 (overruling New York *v.* Miln, 11 Pet. 136, on this point).
Crandall *v.* Nevada, 6 Wall. 40.
Henderson *v.* New York, 92 U. S. 269.
Hall *v.* De Cuir, 95 U. S. 516.
People *v.* Compagnie Gen. Transatlantique, 107 U. S. 60.

Railroads and express companies.[1]—*In general.*—Carriers engaged in interstate and intrastate commerce are subject to the regulation of Congress in so far as they are engaged in interstate commerce, and to the regulation of the States so far as they are engaged in intrastate commerce.

A contract by a railroad to furnish cars on a certain day for interstate transportation as common carrier, is void if not provided for in the published tariffs.

Chicago & Alton R. R. Co. *v.* Kirby, 225 U. S. 155.
Davis *v.* Cornwell, 264 U. S. 560.
Missouri, etc., R. Co. *v.* Larabee, 211 U. S. 612.

Construction of railroads.—Under the power given by this clause, Congress has the right to authorize the construction of railroads and terminal facilities.

California *v.* Central Pac. R. Co., 127 U. S. 39.
Railroad Comm. *v.* Southern Pac. Co., 264 U. S. 331.

Right of way.—In exercising the power of eminent domain, Congress has a right to grant railroad right of way through lands owned by an Indian nation where the road will have relation to interstate commerce.

Cherokee Nation *v.* Southern Kansas R. Co., 135 U. S. 641.

Stocks and bonds.—Federal act requiring carrier to obtain permission before issuing stocks and bonds held not to deny due process.

Pittsburgh & W. V. Ry. *v.* I. C. C., 293 Fed. 1001.

Rolling stock.—An early conception of right-of-way railroads was that the corporation should provide only motive power and

[1] See also "Exclusive powers of Congress," p. 92.

that cars should be provided by individual users of the road. Under such a scheme, the engines—while individually in and of themselves chattels—would, while in use, savor of realty, like trade fixtures, and would be, *pro tanto*, within principles applicable to the real estate plant. The scheme proved to be impracticable, as a general scheme, and gave way, in general, to the plan of ownership by the railroad corporation, of cars, as well as engines, and other rolling stock.

Lake Superior, etc., R. Co. *v.* U. S., 93 U. S. 442.
Atchison, etc., R. Co. *v.* Denver, etc., R. Co., 110 U. S. 667.
New York, etc., R. Co. *v.* New York, 165 U. S. 628.
Chicago, etc., R. Co. *v.* Arkansas, 219 U. S. 453.

For instances of arbitrary and unreasonable (and therefore void) State requirement of furnishing freight cars, see:

Houston, etc., R. Co. *v.* Mayes, 201 U. S. 321.
St. Louis, etc., R. Co. *v.* Arkansas, 217 U. S. 136.

Distribution of coal cars.—A rule fixing the number of cars distributable to coal mines in proportion to the daily capacity of each to produce, held not arbitrary, unreasonable, or violative of due process as applied to mines served by more than one carrier.

United States *v.* New River Co., 265 U. S. 533.

Coal cars owned by an interstate carrier in which it receives from the tipple of the coal mines along its line purchased by it and used solely for its own fuel purposes, come within the instrumentalities by which commerce is carried on.

I. C. C. *v.* Illinois Cent. R. Co., 215 U. S. 452.

State railroad engaging in interstate commerce.—When a State railroad corporation voluntarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage of shipment of goods it is subjected, so far as such traffic is concerned, to the regulating power of Congress; likewise, a railroad company which has become a link in a through line of road over which, as part of its business, freight and passengers are carried into and out of the State is engaged in interstate commerce.

I. C. C. *v.* Detroit, etc., R. Co., 167 U. S. 642.
Norfolk R. Co. *v.* Pennsylvania, 136 U. S. 114.

Regulation of rates—(a) In general.—Congress may legislate in respect to interstate commerce to the same extent both as to rates and all other matters of regulation as the States may do in respect to purely local or internal commerce, and therefore State requirements as to rates for interstate commerce are not operative. In the absence of congressional action, however, minor State regulation is permissible.

Kentucky, etc., Brdg. Co. *v.* Louisville, etc., R. Co., 37 Fed. 634.
Wabash, etc., R. Co. *v.* Illinois, 118 U. S. 557.
Hanley *v.* Kansas City, etc., R. Co., 187 U. S. 617.
Railroad Company *v.* Fuller, 17 Wall. 560.

(*b*) *Long and short haul.*—The long and short haul provision of the act to regulate commerce held valid.

Intermountain Rate Cases, 234 U. S. 476.
Louisville, etc., R. Co. *v.* Eubank, 184 U. S. 43.

The long and short haul provision of the interstate commerce act (sec. 4) is violated, and the carrier incurs, prima facie at least, the penalties prescribed by section 10 by publishing, without authority from the commission, a rate for a longer haul lower than that scheduled for a shorter haul of the same kind of property over the same line or route in the same direction.

Davis *v.* Portland Seed Co., 264 U. S. 403.

(*c*) *Abrogating passes granted for life.*—That provision of the act to regulate commerce providing that no carrier should issue or give any interstate free ticket is not invalid as applied to the case of an agreement made many years previously to issue free passes for life in compromise of a claim for damages for injuries.

Louisville, etc., R. Co. *v.* Mottley, 219 U. S. 467.

(*d*) *Obtaining transportation at less than published rates.*—The Elkins Act is not invalid in authorizing the prosecution of a shipper for securing transportation of goods in interstate commerce at less than the carrier's published rates within any district through which the transportation may have been conducted.

Armour Packing Co. *v.* U. S., 209 U. S. 56.

No contract of a carrier can reduce the amount of charges legally payable to it under its tariff for an interstate shipment, or release from liability a shipper who has assumed their payment; nor can any act or omission of the carrier (except the running of the statute of limitations) estop or preclude it from enforcing payment of the full amount by the person liable.

L. & N. R. R. *v.* Central Iron Co., 265 U. S. 59.

For the purpose of securing the reduced rates for transportation of its property over land-grant railroads, the Government purchased goods for prices f. o. b. at place of shipment, paid the freight, and had shipment made by the sellers with Government bills of lading. *Held*, that title passed at place of shipment, although the contracts of sale reserved to the Government the right of inspection and rejection at the place of destination and imposed certain duties there upon the sellers, and that goods so transported, and accepted by the Government, were entitled to the reduced rates of transportation.

Illinois Central R. R. *v.* U. S., 265 U. S. 209.

(*e*) *Connecting carriers.*—Provisions of interstate commerce act, regulating liability of connecting carrier, is a valid regulation of interstate commerce.

Galveston, etc., R. Co. *v.* Wallace, 223 U. S. 481.
Atlantic Coast Line *v.* Riverside Mills, 219 U. S. 186.
I. C. C. *v.* Detroit, etc., R. Co., 167 U. S. 633.

Louisville, etc., R. Co. *v.* Behlmer, 175 U. S. 648.
Gulf, etc., R. Co. *v.* Texas, 204 U. S. 403.
U. S. *v.* Delaware & H. Co., 213 U. S. 366.
Chicago, etc., R. Co. *v.* Iowa, 233 U. S. 334.
U. S. *v.* Colorado, etc., R. Co., 157 Fed. 321 (writ of certiorari denied, Colorado, etc., R. Co. *v.* U. S., 209 U. S. 544).
Barrett *v.* City of New York, 183 Fed. 793.
Norfolk, etc., R. Co. *v.* Pennsylvania, 136 U. S. 114.

(*f*) *Incidental control of intrastate rates.*—Congress is entitled to keep the highways of interstate communication open to interstate traffic upon fair and equal terms. That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention. Nor can the attempted exercise of State authority alter the matter, where Congress has acted, for a State may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden.

Houston, etc., R. Co. *v.* U. S., 234 U. S. 342.
Texas *v.* Eastern Texas R. Co., 258 U. S. 204.

(*g*) *Prohibiting combinations between competing roads.*—Congress, in the exercise of its right to regulate interstate commerce, has the power to prohibit, as in restraint of interstate commerce, a contract or combination between competing railroads entered into for the purpose of establishing and maintaining interstate rates and fares for transportation on any of the roads parties to the contract or combination, even though the rates and fares thus established are reasonable.

U. S. *v.* Joint Traffic Assn., 171 U. S. 505.

(*h*) *Express rates.*—The so-called uniform zone or block system of express rates in interstate transportation, established by the Interstate Commerce Commission, which prohibits charging higher interstate rates than intrastate rates, and which may be complied with by reducing the interstate rates to the local scale, or by raising the local rates to the interstate scale, or by reducing one and raising the other until equality is reached in an intermediate scale, must be observed.

American Exp. Co. *v.* Caldwell, 244 U. S. 617.

Section 15, paragraph 4, of the amended interstate commerce act provided that, in establishing any through route, the commission shall not "require any carrier by railroad, without its

consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established." Held, that an express company is not a "carrier by railroad" within the meaning of the paragraph.

U. S. *v.* American Ry. Exp. Co., 265 U. S. 427.

Prohibiting transportation of commodities produced by carrier.—So-called commodities clause of the act to regulate commerce (act of June 29, 1906, 34 Stat. 584) held to be within the power of Congress under this clause.

U. S. *v.* Delaware & H. Co., 213 U. S. 366.
Delaware, etc. R. Co. *v.* U. S., 231 U. S. 363.

Safety appliance acts.—The acts of Congress known as the safety appliance acts were within the power of Congress to enact as applied to vehicles used on any railroad that is a highway of interstate traffic and are not confined to vehicles engaged in such traffic.

Southern R. Co. *v.* U. S., 222 U. S. 20.
U. S. *v.* Atlantic Coast Line, 153 Fed. 918.
Chicago, etc., R. Co. *v.* Brown, 229 U. S. 317.
New York Central *v.* U. S., 265 U. S. 41.

Congress had the power to adopt the provisions of the safety appliance acts making a railroad whose right of way is used for the transportation of interstate traffic liable to an employee not engaged in interstate commerce for defects in appliances.

Texas, etc., R. Co. *v.* Rigsby, 241 U. S. 33.
Missouri, etc., R. Co. *v.* Castle, 224 U. S. 541.
Southern R. Co. *v.* Indiana, 236 U. S. 439.
St. Louis, etc., R. Co. *v.* Taylor, 210 U. S. 281.
Baltimore, etc., R. Co. *v.* Baugh, 149 U. S. 368.

Liability for loss or injury to property.—The power of Congress comprehends power to regulate contracts between the shipper and the carrier by defining the liability of the carrier for loss, delay, injury, or damage to such property.

Adams Exp. Co. *v.* Croninger, 226 U. S. 491.
Chicago, etc., R. Co. *v.* Miller, 226 U. S. 513.
Michigan Cent. R. Co. *v.* Owen & Co., 256 U. S. 427.
See also—
Peirce *v.* Van Dusen, 78 Fed. 693 (as to power of States).

"Carmack amendment" making initial carrier liable for loss or injury.—The provisions of the so-called Carmack amendment to the act to regulate commerce (June 29, 1906, 34 Stat. 584, 595), the effect of which is to hold the initial carrier as having contracted for through carriage to destination and liable

to the shipper for loss or injury to property on a connecting line, held valid.

Atlantic Coast Line *v.* Riverside Mills, 219 U. S. 186.
Boston, etc., R. Co. *v.* Hooker, 233 U. S. 97.
Atchison, etc., R. Co. *v.* Robinson, 233 U. S. 173.
Norfolk, etc., R. Co. *v.* Dixie Tobacco Co., 228 U. S. 593.
St. Louis, etc., R. Co. *v.* Alexander, 227 U. S. 218.
Galveston, etc., R. Co. *v.* Wallace, 223 U. S. 481.
Cincinnati, etc., R. Co. *v.* Rankin, 241 U. S. 319.

The first "Cummins Amendment" (March 4, 1915, c. 176, 38 Stat. 1196) made the carrier liable for the full actual loss of property shipped, when caused by the carrier, regardless of any agreement or representation of the shipper.

Adams Express Co. *v.* Darden, 265 U. S. 265.

Liability for injury or death of employees.—A freight conductor on a round-trip run between State points held not engaged in interstate commerce within employers' liability act, while on a train on his return trip, devoted solely to domestic commerce, because his train on the trip out carried interstate freight.

Illinois Cent. R. Co. *v.* Peery, 242 U. S. 292.

A night watchman, injured while guarding tools and material for the erection of a depot, held not engaged in interstate commerce, though such depot was intended to be used in interstate commerce.

New York Cent. R. Co. *v.* White, 243 U. S. 188.

Member of crew switching loaded cars from storage track to coal shed was not engaged in interstate commerce, although coal was to be used by locomotives in interstate haul.

Chicago, etc., R. Co. *v.* Harrington, 241 U. S. 177.

Fireman on switching engine, killed while his engine was transferring an empty car, was employed in interstate commerce if the movement was for purpose of reaching an interstate car.

Louisville, etc., R. Co. *v.* Parker, 242 U. S. 13.

In Reed *v.* Director General (258 U. S. 92), the court held that in actions under the employers' liability act the doctrine of assumption of risk has no application when the negligence of a fellow servant which the injured party could not have foreseen is the sole, direct, and immediate cause of the injury.

See also—
Erie R. Co. *v.* Welsh, 242 U. S. 303.
Lehigh Valley R. Co. *v.* Barlow, 244 U. S. 183.
Southern R. Co. *v.* Puckett, 244 U. S. 571.

In North Carolina R. Co. *v.* Lee (260 U. S. 16) it was held that a lessor railroad was not liable for death of employee during Federal control.

Qualifications and duties of employees.—Congress may legislate as to the qualifications, duties, and liabilities of employees and others on railway trains engaged in interstate commerce, and such legislation will supersede any State action on the subject.

Nashville, etc., R. Co. *v.* Alabama, 128 U. S. 99.

Hours of service of employees.—The so-called hours-of-service act is not invalid as applied to those who are engaged in both interstate and intrastate service; that is, as to all employees connected with the movement of trains in interstate transportation, but intrastate railroads and employees engaged in purely and wholly local business are not affected by its provisions.

Baltimore, etc., R. Co. *v.* I. C. C., 221 U. S. 612.
Wilson *v.* New, 243 U. S. 332.
Northern Pac. R. Co. *v.* Washington, 222 U. S. 370.
Erie R. Co. *v.* New York, 233 U. S. 671.

Railroad Labor Board.—Transportation act 1920, authorizing the Labor Board to ascertain just and reasonable wages and working conditions does not violate right of private contract, or take property without due process.

Pennsylvania R. Co. *v.* Labor Board, 282 Fed. 693.

Uniform system of accounting.—Act of Congress of June 29, 1906, authorizing the Interstate Commerce Commission to regulate the entire system of bookkeeping of interstate carriers, including its intrastate accounts, held valid.

I. C. C. *v.* Goodrich Transit Co., 224 U. S. 194.
Kansas City, etc., R. Co. *v.* U. S., 231 U. S. 423.

Valuation of property.—Under section 19a of the act to regulate commerce, directing the commission to investigate, ascertain, and report the value of the properties of common carriers, and to hear the protests of any carrier against a valuation tentatively made; declaring a final valuation *prima facie* evidence of the value of the carrier's property in all proceedings under the act and in various judicial proceedings, and providing that, unless otherwise ordered by the commission, its records and data shall be open to the inspection and examination of the public, held, that an order of the commission denying inspection of records by others than its employees, unless and until offered in evidence, was valid against an interested carrier in so far as the claim to examine them might be based upon the naked ground of their being public documents. Congress may make one fact *prima facie* evidence of another if the inference is not so unreasonable as to be a purely arbitrary mandate.

St. Louis Ry. *v.* Int. Com. Com., 264 U. S. 64.

Effect of membership in labor organization.—Act of Congress of June 1, 1898 (30 Stat. 424), making it a criminal offense against the United States for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization, can not be sustained

under the power of Congress to regulate commerce, and is unconstitutional.

Adair *v.* U. S., 208 U. S. 161.

Telegraph and telephone companies.—A telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods. Both companies are instruments of commerce and their business is commerce itself.

Telegraph Co. *v.* Texas, 105 U. S. 460.

Ships and shipping.—*In general.*—The power to regulate commerce includes navigation as well as traffic in its ordinary signification, and embraces ships and vessels as the instruments of intercourse and trade as well as officers and seamen employed in their navigation.

State Tonnage Tax Cases, 12 Wall. 216.
Sherlock *v.* Alling, 93 U. S. 103.
Street *v.* Shipowners' Assn., 263 U. S. 334.

The whole commercial marine of the country is placed by the Constitution under the regulation of Congress, and all laws passed by that body in the regulation of navigation and trade, whether foreign or coastwise, is therefore but the exercise of an undisputed power. When, therefore, an act of the legislature of a State prescribes a regulation of the subject repugnant to and inconsistent with the regulation of Congress, the State law must give way; and this without regard to the source of power whence the State legislature derived its enactment.

Sinnot *v.* Davenport, 22 How. 243 (reversing Pilotage Comrs. *v.* The Steamboat *Cuba*, 28 Ala. 185).

See also—

The *Daniel Ball*, 10 Wall. 564.

The duty of an interstate carrier by water under section 1, subdivision (4), of the amended interstate commerce act, to furnish transportation upon reasonable request, does not oblige it to continue operation of boats on a particular route; and section 1, subdivision (18), of the commerce act, concerning abandonment, relates only to railroads.

Lucking *v.* Detroit Nav. Co., 265 U. S. 347.

When a vessel is engaged in interstate commerce.—It is entirely possible for a vessel to be engaged in interstate commerce although all the ports touched by her are in the same State; and in the absence of evidence to the contrary it may be inferred from the route pursued by the boat and the connection between the boat and railroads at each end of her route, that the boat is so engaged. The extent to which she is engaged in interstate commerce is immaterial.

Lord *v.* Steamship Co., 102 U. S. 541.
The *Hazel Kirke*, 25 Fed. 601.
The *Gretna Green*, 20 Fed. 901.

Enrolling and licensing of vessels.—The power of Congress to require vessels to be enrolled and licensed is derived from the

commerce clause, but such enrollment does not of itself exclude the right of a State to exact a license from her own citizens on account of their ownership and use of such property having its situs within the State.

Wiggins Ferry Co. *v.* East St. Louis, 107 U. S. 377.
The *Daniel Ball*, 10 Wall. 563.
I. C. C. *v.* Goodrich Transit Co., 224 U. S. 194.

Limitation of vessel owners' liability.—Act of June 19, 1886, which extends the limited liability acts to all sea-going vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters, was passed in amendment of the maritime law, and the power to make such amendments is coextensive with such law. The power of Congress is not confined to the boundaries or class of subjects which limit and characterize the power to regulate commerce; but in maritime matters it extends to all matters and places to which the maritime law extends.

In re Garnett, 141 U. S. 12.
The *Katie*, 40 Fed. 480.
In re Vessels Owners' Towing Co., 26 Fed. 169.
The *Garden City*, 26 Fed. 766.
In re Long Island, etc., Transp. Co., 5 Fed. 599.
King *v.* American Transp. Co., 1 Flipp. (U. S.) 1.

Recording conveyances of vessels.—Act of Congress of July 29, 1850, held constitutional. As Congress under its power to regulate commerce has made regulations pertaining to vessels of the United States, its power may be extended to the security and protection of the rights and title of all persons dealing in such property.

White's Bank *v.* Smith, 7 Wall. 650.
Aldrich *v.* Aetna Ins. Co., 8 Wall. 491.

Regulating payment of seamen's wages.—Act of Congress making it unlawful to pay any seaman wages in advance held valid as applied to contracts of sailors for interstate and foreign service.

Patterson *v.* Bark *Eudora*, 190 U. S. 173.
Kenney *v.* Blake, 125 Fed. 672.

As to prohibiting foreign vessels from entering United States ports, see " Commerce with Foreign Nations," p. 106.

Navigation and navigable waters.—The power of Congress to regulate navigable waters is not expressly granted in the Constitution, but is a power incidental to the express power to regulate commerce. All the powers which existed in the States before the adoption of the Constitution are the powers possessed by Congress over navigable waters under its authority to regulate commerce. This power involves the control of the waters

of the United States which are navigable in fact. On this subject the court said, in Nelson *v.* Leland (22 How. 55):

> Under the English system the ebb and flow of the tide, with few if any exceptions, established the fact of navigability; and this was the course of decision in this country until recently. * * * Our contracted views of the English Admiralty, which was limited by the ebb and flow of the tide, were discarded and the more liberal principles of the civil law, equally embraced by the Constitution, were adopted. This law is commercial in its character and applies to all navigable waters, except to a commerce exclusively within a State. Many of our leading rivers are sometimes unnavigable; but this can not affect their navigability at other times. A commerce carried on between two or more States is subject to the laws and regulations of Congress and to the admiralty jurisdiction.

See also—
Leovy *v.* U. S., 177 U. S. 632.
Gilman *v.* Philadelphia, 3 Wall. 725.
Escanaba Co. *v.* Chicago, 107 U. S. 682.
Miller *v.* New York, 109 U. S. 395.
Pennsylvania *v.* Wheeling, etc., Brdg. Co., 18 How. 421.
Cardwell *v.* Bridge Company, 113 U. S. 205.
Gibson *v.* U. S., 166 U. S. 269.
The *Abby Dodge*, 223 U. S. 166.
Hill *v.* U. S., 149 U. S. 593.
Manigault *v.* Springs, 199 U. S. 473.

All navigable waters are under the control of the United States for the purpose of regulating and improving navigation, and although the title to the shore and submerged soil is in the various States, and individual users under them, it is always subject to the servitude in respect of navigation created in favor of the Federal Government by the Constitution.

Gibson *v.* U. S., 166 U. S. 269.
U. S. *v.* Chandler-Dunbar, etc., Co., 229 U. S. 53.
U. S. *v.* Cress, 243 U. S. 316.
McCready *v.* Virginia, 94 U. S. 391.
Illinois Cent. R. Co. *v.* Illinois, 146 U. S. 387.

The title and rights of riparian or littoral proprietors in the soil below high-water mark are governed by the laws of the several States, subject to the rights granted to the United States by the Constitution.

Shively *v.* Bowlby, 152 U. S. 1.

The power to regulate commerce includes the regulation of navigation and comprehends navigation within the limits of every State in the Union so far as that navigation may be in any manner connected with the commerce over which Congress has jurisdiction.

Cooley *v.* Philadelphia, 12 How. 299.
Gibbons *v.* Ogden, 9 Wheat. 189.
The *City of Salem*, 37 Fed. 846.
The *Hazel Kirke*, 25 Fed. 607.
Foster *v.* Davenport, 22 How. 244.
Pennsylvania *v.* Wheeling, etc., Brdg. Co., 18 How. 421.

Gilman *v.* Philadelphia, 3 Wall. 725.
Union Bridge Co. *v.* U. S., 204 U. S. 364.
Kansas City, etc., R. Co. *v.* Kaw Valley, 233 U. S. 75.
Railroad Company *v.* Richmond, 19 Wall. 584.

An obstruction placed by authority of Congress at the head of one channel in a navigable river between two States, for the purpose of improving another channel, is not an invalid exercise by Congress of control of a navigable river.

South Carolina *v.* Georgia, 93 U. S. 13.
Woodruff *v.* North Bloomfield, etc., Co., 18 Fed. 778.

Under the power to regulate commerce Congress may establish lighthouses, build wharves, improve harbors, etc.

Legal Tender Cases, 12 Wall. 537.
Philadelphia Co. *v.* Stimson, 223 U. S. 605.

The liability of the United States under the fifth amendment to make just compensation for land taken by the Government for public use is not defeated because such land was taken in the exercise of the power of Congress to improve navigation.

U. S. *v.* Lynah, 188 U. S. 445.
Chappell *v.* Waterworth, 155 U. S. 102.

Canals.—Congress had power to construct the Panama Canal acquired by treaty with the Republic of Panama.

Wilson *v.* Shaw, 204 U. S. 24.

Canals and waterways may be opened to connect navigable bays, harbors, and rivers with each other or with the interior of the country.

Stockton *v.* Baltimore, etc., R. Co., 32 Fed. 9.

Bridges.—The paramount power of regulating bridges that affect navigation is in Congress. It comes from the power to regulate commerce.

Bridge Co. *v.* U. S., 105 U. S. 475.
Stone *v.* Bridge Co., 206 U. S. 267.
Willamette Iron Bridge Co. *v.* Hatch, 125 U. S. 12.
Monongahela Bridge Co. *v.* U. S., 216 U. S. 177.
Gilman *v.* Philadelphia, 3 Wall. 713.

Congress may use its sovereign powers directly or through a corporation created for that object, to construct bridges for the accommodation of interstate commerce.

Luxton *v.* North River Bridge Co., 153 U. S. 530.
Miller *v.* New York, 109 U. S. 385.
Pennsylvania R. Co. *v.* Baltimore, etc., R. Co., 37 Fed. 129.

An act of Congress declaring certain bridges across a river between two States "to be lawful structures in their present positions and elevations, and shall be so held and taken to be, anything in the law or laws of the United States to the contrary

notwithstanding," is a constitutional exercise of the power of Congress to regulate commerce.

Pennsylvania *v.* Wheeling, etc., Bridge Co., 18 How. 429.
Union Bridge Co. *v.* U. S., 204 U. S. 364.
Clinton Bridge, 10 Wall. 454.

The Ohio River is a navigable stream subject to the commercial power of Congress, and a State law authorizing the erection of a bridge obstructing navigation affords no justification to the bridge company.

Pennsylvania *v.* Wheeling, etc., Brdg. Co., 13 How. 518.

A bridge over an interstate waterway, though erected under the sanction of a State, and not an illegal structure, or an unreasonable obstruction to navigation in the condition of commerce and navigation when erected, must be taken as having been constructed with knowledge of the paramount power of Congress to regulate commerce, and subject to the possibility that Congress might, at some time after its construction, exert its constitutional power to protect free navigation as it then was against unreasonable obstructions.

Monongahela Brdg. Co. *v.* U. S., 216 U. S. 177.

The United States has power to confer authority on a municipal corporation to build and maintain an interstate bridge over a navigable stream, and to that end to condemn land for approaches in another State.

Latinette *v.* St. Louis, 201 Fed. 676.

An act of Congress authorizing the Secretary of War, when he deems any railroad or other bridge over any of the navigable waterways of the United States to be an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise, to require the alteration of the bridge so as to render navigation under it reasonably unobstructed, does not deprive the States of authority to grant power to bridge navigable streams, but simply creates an additional and cumulative remedy to prevent such structures, although lawfully authorized, from interfering with commerce.

Lake Shore, etc., R. Co. *v.* Ohio, 165 U. S. 365.

A State has no power to fix tolls on a bridge connecting it with another State, thereby regulating charges on interstate commerce, without the assent of Congress or the concurrence of such other State.

Covington, etc., Brdg. Co. *v.* Kentucky, 154 U. S. 204.
Canada, etc., R. Co. *v.* International Brdg. Co., 8 Fed. 191.

Pilots.[1]—The power of Congress to regulate commerce is without limitation and extends to all subjects of commerce, and to all persons engaged in it, and embraces traffic, navigation, and

[1] See also same subject under "Powers Remaining in the States," etc., p. 172.

intercourse, and the whole subject of pilots and pilotage, but the Constitution does not in terms exclude the exercise of any authority by the States to regulate pilots, and the States have authority to regulate the subject in the absence of congressional legislation. Mr. Justice Curtis, in delivering the opinion of the court in Cooley *v.* Philadelphia (12 How. 315), said:

> When we look at the nature of the service performed by pilots, to the relations which that service and its compensations bear to navigation between the several States, and between the ports of the United States and foreign countries, we are brought to the conclusion that the regulation of the qualifications of pilots, of the modes and times of offering and rendering their services, of the responsibilities which shall rest upon them, of the powers they shall possess, of the compensation they may demand, and of the penalties by which their rights and duties may be enforced, do constitute regulation of navigation, and consequently of commerce, within the just meaning of this clause of the Constitution.

See also Steamship Co. *v.* Joliffe, 2 Wall. 450.
Anderson *v.* Pacific Coast S. S. Co., 225 U. S. 187.

Acts of August 7, 1789, March 2, 1837, August 30, 1852, June 8, 1864, July 13, 1866, July 25, 1866, and February 25, 1867, regulating pilotage, exert and exercise the plenary power of Congress over the subject.

Ex parte McNiel, 13 Wall. 236.

The adoption by Congress of State laws regulating pilotage renders them enforceable, though they are regulations of commerce.

Wilson *v.* McNamee, 102 U. S. 572.

The legislation of Congress prescribing the qualifications for pilots and engineers of steam vessels engaged in the coasting trade, navigating the inland waters of the United States while engaged in interstate commerce is justified on the ground that it is incident to the power to regulate commerce.

Smith *v.* Alabama, 124 U. S. 465.

The States have concurrent power with Congress to pass pilotage laws until Congress shall take exclusive control of the subject by the enactment of a general and uniform law; and such acts as Congress shall make are of paramount authority, and all State laws which are in direct and manifest collision with them must yield.

The *South Cambria*, 27 Fed. 525.
Freeman *v.* The *Undaunted*, 37 Fed. 662.

For concurrent powers of Congress and the States regarding pilots, see:

Steamship Company *v.* Port Wardens, 6 Wall. 31.
Gibbons *v.* Ogden, 9 Wheat. 207.
Cooley *v.* Philadelphia, 12 How. 319.
Spraigue *v.* Thompson, 118 U. S. 90.
Anderson *v.* Pacific Coast S. S. Co., 225 U. S. 187.
Olsen *v.* Smith, 195 U. S. 341.

Wharves.—Though the use of public wharves may be regulated by Congress as a part of the commercial power, it certainly does not belong to that class of subjects which are in their nature national, requiring a single uniform rule, but to that class which are in their nature local, requiring a diversity of rules and regulations.

Transportation Co. *v.* Parkersburg, 107 U. S. 702.

Ferries.—It is within the maritime powers of Congress to impose regulations on steam ferryboats for the protection of their passengers and crews, although they are operated wholly within a State, where they navigate waters of the United States which are common highways of commerce.

The Nassau, 188 Fed. 46, reversing judgment in 182 Fed. 696; writ of error denied, City of New York *v.* U. S., 223 U. S. 722.

Purely and solely from the standpoint of movement and transportation, interferriage is within the general Federal power over commerce. Pursuant, however, to a common-law conception and to common-law usage and practice, an exclusive right of maintenance of a ferry from and to a certain parcel of riparian land within a State may exist as an easement appurtenant to such parcel.

Fanning *v.* Gregoire, 16 How. 524.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 196.
St. Clair County *v.* Interstate Transfer Co., 192 U. S. 454.
New York, etc., R. Co. *v.* Hudson County, 227 U. S. 248.
Sault Ste. Marie *v.* International Transit Co., 234 U. S. 333.
Conway *v.* Taylor, 1 Black 603.
Port Richmond Ferry *v.* Hudson County, 234 U. S. 317.

Intoxicating liquors.[1]—*The Wilson Act* extends to criminal and penal as well as to civil State enforcement of the local policy. It applies to liquors brought into a State from a foreign country as well as to liquors brought in from other States.

In re Rahrer, 140 U. S. 545.
De Bary *v.* Louisiana, 227 U. S. 108.

It does not extend to liquors bought for the purchaser's own consumption. In respect of such liquors it does not vest either power of direct local control or power of indirect State action by way of dealing with interstate transportation.

Vance *v.* Vandercook Co., 170 U. S. 438.
Rossi *v.* Pennsylvania, 238 U. S. 62.
Louisville, etc., R. Co. *v.* Cook Brewing Co., 223 U. S. 70.

It does, however, vest power of indirect dealing with liquors purchased (or to be purchased) for such use to the extent of vesting local power of inhibition (or of regulation) of local solicitation of such purchases.

Delamater *v.* South Dakota, 205 U. S. 93.

[1] See same subject, pp. 314, 605, 685, 734, and 747.

It does not extend to liquors while in actual interstate transit proper—i. e., interstate transit apart from the conventional extension thereof by the original-package doctrine—even where the interstate transit is by its own terms terminable in a particular State or even in the case of C. O. D. sales in which the contract of sale was made outside of a State in question and delivery there is to be made in the State of the contract of sale by the vendor to a carrier as agent of the purchaser. Likewise it does not extend to liquors merely passing through a State in the course of interstate transit.

American Express Co. *v.* Iowa, 196 U. S. 133 (explaining O'Neil *v.* Vermont, 144 U. S. 323).
Adams Express Co. *v.* Iowa, 196 U. S. 147.
Heyman *v.* Southern R. Co., 203 U. S. 270.
Rhodes *v.* Iowa, 170 U. S. 412.

It does not affect in any way the matter of State authority over goods after interstate transportation has ceased.

Pabst Brewing Co. *v.* Crenshaw, 198 U. S. 17.
Phillips *v.* Mobile, 208 U. S. 472.
Foppiano *v.* Speed, 199 U. S. 501.
Rosenberger *v.* Pacific Exp. Co., 241 U. S. 48.

The Webb-Kenyon Act.—What has been said of the Wilson Act is applicable also to the Webb-Kenyon Act. It is operative only where the proposed use is violative of specific law of the consignee's State dealing with alcoholic liquors, not qualificatory in and of itself of the general interstate commerce law.

Adams Exp. Co. *v.* Kentucky, 238 U. S. 190.

The Reed amendment prohibiting the transportation of liquor into any State or Territory the laws of which prohibit the manufacture or sale of the same for beverage purposes is constitutional, though construed to include the transportation of the same on the person for personal use and though transported into a State which permits the introduction of liquor for personal use in limited quantities.

U. S. *v.* Hill, 248 U. S. 420.
Williams *v.* U. S., 255 U. S. 336.
See also—
Seaboard Air Line *v.* North Carolina, 245 U. S. 298. (Statute requiring records to be kept by carriers of intoxicating liquors.)

Food and drugs.—The food and drugs act (1906), under which adulterated articles of food, the subjects of interstate commerce, may be confiscated by a proceeding in rem in the Federal courts after they have reached destination and there remain in the hands of the consignee in the original unbroken packages, held constitutional.

Hipolite Egg Co. *v.* U. S., 220 U. S. 45.
See also—
Seven Cases *v.* U. S., 239 U. S. 510.

Plumley *v.* Massachusetts, 155 U. S. 461.
McDermott *v.* Wisconsin, 228 U. S. 115.
U. S. *v.* Seventy Four Cases, 181 Fed. 629.
U. S. *v.* 420 Sacks, 180 Fed. 518.
Minnesota *v.* Brundage, 180 U. S. 499.
Austin *v.* Tennessee, 179 U. S. 343.
U. S. *v.* Jin Fuey Moy, 241 U. S. 394.
Brolan *v.* U. S., 236 U. S. 216.

Animals.—The regulation of the transportation of cattle from State to State is within the power of Congress.

Reid *v.* Colorado, 187 U. S. 137.
Swift v. U. S., 196 U. S. 375.
Swift *v.* Sutphin, 39 Fed. 630.
Hopkins *v.* U. S., 171 U. S. 578.
Anderson *v.* U. S., 171 U. S. 604.

Imports and exports.—The power of Congress under the commerce clause protects property transported as an article of commerce from foreign countries or among the States from interfering State legislation and from any burdens imposed by reason of its foreign origin.

Welton *v.* Missouri, 91 U. S. 275.
The *Abby Dodge*, 223 U. S. 166.

Birds and game.[1]—The provisions of the act of Congress of May 25, 1900, known as the Lacey Act, prohibiting the shipment or transportation in interstate commerce of game killed in violation of the local laws, and requiring all packages containing game shipped in interstate commerce to be plainly marked showing the name and address of the shipper and the nature of the contents, and making the violation of such provisions a criminal offense, are within the powers of Congress.

Rupert v. U. S., 181 Fed. 87.

The provisions of the act of Congress of March 4, 1913 deeming migratory birds to be under the protection of the United States, and authorizing the Department of Agriculture to adopt regulations prescribing closed seasons, are invalid.

U. S. *v.* McCullagh, 221 Fed. 288.
U. S. *v.* Shauver, 214 Fed. 154.

See also U. S. *v.* Samples (258 Fed. 479) and Missouri *v.* Holland (252 U. S. 416), wherein similar act, following treaty, was held not unconstitutional. For jurisdiction of States, see—

Silz *v.* Hesterburg, 211 U. S. 31.
Geer *v.* Connecticut, 161 U. S. 519.

Correspondence schools.—The business of teaching by mail has been held to be interstate commerce where the school and the students are located in different States.

International, etc., Co. *v.* Pigg, 217 U. S. 91.
International, etc., Co. *v.* Peterson, 218 U. S. 664.

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[1] See also "Protection of Migratory Birds," under Article IV, section 3, clause 2, p. 530.

Oil and gas.—Act of Congress of March 2, 1917 (sec. 29), declaring "that no person shall mix for sale naphtha and illuminating oils, or shall knowingly sell or keep for sale, or offer for sale such mixture, or shall sell or offer for sale oil made from petroleum for illuminating purposes," and that any person so doing shall be held to be guilty of a misdemeanor, etc., was held to be a police regulation relating exclusively to the internal trade of the State, and to have effect only where the legislative authority of Congress excludes, territorially, all State legislation, as, for example, in the District of Columbia. Within State limits, it can have no constitutional operation.

U. S. *v.* Dewitt, 9 Wall. 41.

While the transportation of natural gas is expressly excepted from the provisions of the act to regulate commerce (sec. 1), yet there have been some cases carried to the Supreme Court of the United States in which State laws attempting to regulate the subject have been held to be unconstitutional as interfering with interstate commerce.

Oklahoma *v.* Kansas Natural Gas Co., 221 U. S. 229.
Haskell *v.* Kansas Natural Gas Co., 224 U. S. 217.
Pennsylvania *v.* West Va., 262 U. S. 553
See also—
Haskell *v.* Cowham, 187 Fed. 403.
Manufacturers' Light & Heat Co. *v.* Ott, 215 Fed. 940.
Fidelity, etc., Co. *v.* Kansas, etc., Gas Co., 219 Fed. 614.

The business of piping natural gas from one State to another and selling it, not to consumers, but to independent distributing companies which sell it locally to the consumers, is interstate commerce free from State interference. Pennsylvania Gas Co. *v.* Public Service Comm., 252 U. S. 23, distinguished. An attempt of a State to fix the rates chargeable in this interstate business is a direct burden on interstate commerce, even in the absence of any regulation of it by Congress.

Missouri *v.* Kansas Gas Co., 265 U. S. 298.

Sponges.—The act of Congress of June 20, 1906, making it unlawful to land, deliver, cure, or offer for sale at any port or place in the United States, any sponges taken by means of diving or diving apparatus from the waters of the Gulf of Mexico or Straits of Florida, can not be applied to sponges taken from the territorial waters of a State, but must be construed as confined to sponges taken outside of such waters.

The *Abby Dodge*, 223 U. S. 166.

Transportation of women for immoral purposes.—The act of Congress of June 25, 1910, known as the white slave traffic act, is a valid exercise of the power of Congress.

Hoke *v.* U. S., 227 U. S. 308.
Athanasaw *v.* U. S., 227 U. S. 326.
Bennett *v.* U. S., 227 U. S. 333.
Harris *v.* U. S., 227 U. S. 340.
Wilson *v.* U. S, 232 U. S, 563.
Caminetti *v.* U. S., 242 U. S. 470.

Obscene publications.—The act of Congress (sec. 245 of the Penal Code) declaring it an offense knowingly to deposit with an express company an obscene, lewd, lascivious, or filthy book, for carriage from one State to another, is valid.

Clark *v.* U. S., 211 Fed. 916.

Importation of prize-fight films.—The act of Congress of July 31, 1912, prohibiting the importation and the interstate transportation of prize-fight films or pictorial representations of prize fights held valid.

Weber *v.* Freed, 239 U. S. 325.
U. S. *v.* Johnston, 232 Fed. 970.

Trade-marks.—Legislation respecting trade-marks, which is not confined to the case of a trade-mark used in foreign or interstate commerce, but which has the broad purpose of establishing a universal system of trade-mark registration for the benefit of all who had already used a trade-mark, or who wished to adopt one for the future, without regard to the character of the trade to which it was to be applied or the residence of the owner, is not within the power of Congress under this clause.

Trade-mark Cases, 100 U. S. 82.

In U. S. *v.* Koch (40 Fed. 250), the court said:

> In what are known as the Trade-mark cases * * * the Supreme Court decided that the act of 1870 was beyond the power of Congress. It suggested in the opinion that under the commerce clause, perhaps, Congress had the power to legislate with reference to trade-marks used in commerce between this country and foreign nations, between the States, and with the Indian tribes. Immediately thereafter the act of 1881 was passed by Congress, providing for the registration of trade-marks which might be used in foreign commerce and commerce with the Indian tribes.

See also—
Leschen Rope Co. *v.* Broderick, 201 U. S. 166.
Rossman *v.* Garnier, 211 Fed. 401.

In Elgin, etc., Co. *v.* Illinois, etc., Co. (179 U. S. 677), the court refrained from discussing the constitutionality of the act of Congress of March 3, 1881, on affirming a decree of dismissal in 94 Fed. 667, for want of jurisdiction, the constitutional question not having been raised in the lower court.

Lottery tickets.—The power to prohibit the carriage of lottery tickets is included in the plenary power of Congress to regulate commerce.

Lottery case, 188 U. S. 321.
Reilley *v.* U. S. 106 Fed. 896.
See also In re Rapier, 143 U. S. 110; and Horner *v.* U. S., 147 U. S. 449, as to exclusion of lottery tickets from the mails.

Embargo.—Every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded when either measure shall be demanded by the safety or by the

important interests of the entire Nation. Such exclusion can not be limited to particular classes or descriptions of commercial subjects; it may embrace manufactures, bullion, coin, or any other thing. The power once conceded, it may operate on any and every subject of commerce to which the legislative discretion may apply it.

U. S. *v.* Marigold, 9 How. 566.

In Gibbons *v.* Ogden (9 Wheat. 191), the court said: "The universally acknowledged power of the Government to impose embargoes must also be considered as showing that all America is united in that construction which comprehends navigation in the word 'commerce.'"

Original packages.—In McDermott *v.* Wisconsin (228 U. S. 136), the court said: "The doctrine of original packages had its origin in the opinion of Chief Justice Marshall in Brown *v.* Maryland." (12 Wheat. 419.)

In May *v.* New Orleans (178 U. S. 496), it was held (p. 508) that where goods were imported from foreign countries and were put up for sale in packages and a number of such packages were enclosed in boxes or cases for purposes of transportation, the box or case in which the packages were shipped, and not the packages themselves, constituted the original package. In this case four of the justices dissented from the judgement of the court.

In Austin *v.* Tennessee (179 U. S. 343), Mr. Justice Brown, in delivering the opinion of the majority of the court, referred to the case of Brown *v.* Maryland, *supra*, as the source of the doctrine of original packages, and in the course of his opinion intimated that it was doubtful whether the decision would have been the same if the orginal package considered in that case had been minute in size instead of consisting of hogsheads and bales of dry goods, and that it was obvious that the doctrine of that case was directed only to those large packages in which, from time to time, it had been customary to import goods from foreign countries.

The conclusion of the court is (p. 360) that original packages are those used in good faith in transactions carried on between the manufacturer and wholesale dealers residing in different States. But where the size of the package indicates that it was gotten up to evade the law of the State to which it is shipped, it will not be protected as an original package. Cigarettes imported in paper packages holding ten cigarettes and without being boxed but thrown loosely into baskets, the court held not to be original packages, but if there be an original package in the case, "it was the basket and not the paper box."

To this decision Mr. Justice Brewer delivered a most vigorous dissent. (See p. 382.)

In Leisy *v.* Hardin (135 U. S. 100), the court held that beer in quarter barrels, one-eighth barrels, and cases of beer constituted original packages.

In Cook *v.* Marshall County (196 U. S. 270), the court said:

> The term "original package" is not defined by any statute, and is simply a convenient form of expression adopted by Chief Justice Marshall in Brown *v.* Maryland, to indicate that a license tax could not be exacted of an importer of goods from a foreign country who disposes of such goods in the form in which they were imported.

In In re Harmon (43 Fed. 372), an express company transported boxes containing different sized bottles, some holding a quart, and some a pint. Each bottle was wrapped in a paper wrapper, or placed in a paper box and then sealed. The bottles were then placed in wooden boxes, without a cover and packed closely together. These boxes were labeled "to be returned." It was held that the boxes and not the bottles were the original packages.

In Guckenheimer *v.* Sellers (81 Fed. 1000), it was held "that an original package is a package delivered by the importer to the carrier at the initial point of shipment, in the exact condition in which it was shipped."

See also—
Purity Extract, etc., Co. *v.* Lynch, 226 U. S. 192.
Schollenberger *v.* Pennsylvania, 171 U. S. 1.
Heyman *v.* Southern R. Co., 203 U. S. 270.
Low *v.* Austin, 13 Wall. 33.
Cook *v.* Pennsylvania, 97 U. S. 573.
Woodruff *v.* Parham, 8 Wall. 123.
Vance *v.* Vandercook, 170 U. S. 438.
In re Rahrer, 140 U. S. 545.
Phillips *v.* Mobile, 208 U. S. 472.
Hipolite Egg Co. *v.* U. S., 220 U. S. 45.
Williams *v.* Walsh, 222 U. S. 415.
Standard, etc., Co. *v.* Wright, 225 U. S. 540.
Rossi *v* Pennsylvania, 238 U. S. 62.
Price *v.* Illinois, 238 U. S. 446.
Sonneborn Bros. *v.* Cureton, 262 U. S. 506.

Trusts and trade associations.—Congress did not exceed its power under the commerce clause in the enactment of the antitrust act.

Northern Securities Co. *v.* U. S., 193 U. S. 197.
U. S. *v.* Joint Traffic Assn., 171 U. S. 505.

The rules and regulations of a live-stock exchange or a board of trade are not agreements affecting interstate commerce within the meaning of the antitrust law, though some of the sales themselves may constitute interstate commerce.

Hopkins *v.* U. S., 171 U. S. 578.
Chicago Board of Trade *v.* U. S., 246 U. S. 231.

A combination of independent meat dealers, in aid of an attempt to monopolize commerce in fresh meats among the States, to restrict the competition of their respective agents when pur-

chasing stock for them in the stockyards, is an interference with interstate commerce, forbidden by the antitrust act.

Swift *v.* U. S., 196 U. S. 375.

The prohibitions of the antitrust act do not exceed the authority of Congress as applied to undue restraints of commerce in petroleum and its products, by contract, combination, or conspiracy, or monopolization.

Standard Oil Co. *v.* U. S., 221 U. S. 1.
Adair *v.* U. S., 208 U. S. 161.

The so-called "Open competition plan" of hardwood lumber dealers found to have the effect of restricting competition in interstate commerce by curtailing production and increasing prices, and held a combination and conspiracy in violation of the antitrust act.

American Column Co. *v.* U. S., 257 U. S. 377 (Justices Holmes, Brandeis, and McKenna dissenting).

Businesses Not Subjects of Interstate Commerce

Insurance.—There are some kinds of business not confined to the States which are yet not within the classification of interstate commerce and which accordingly Congress has no power to regulate. Among these is the business of insurance. It has been held that issuing a policy of fire insurance was not a transaction of commerce; neither is marine insurance, nor life insurance.

Paul *v.* Virginia, 8 Wall. 168.
Hooper *v.* California, 155 U. S. 648.
New York Life *v.* Cravens, 178 U. S. 389.
New York Life *v.* Deer Lodge County, 231 U. S. 495.
Ducat *v.* Chicago, 10 Wall. 410.
Philadelphia Fire Assn. *v.* New York, 119 U. S. 110.
Equitable Life *v.* Clements, 140 U. S. 226.
Noble *v.* Mitchell, 164 U. S. 367.
Mutual Life *v.* Cohen, 179 U. S. 262.
Mutual Life *v.* Hill, 193 U. S. 551.
Northwestern Life *v.* McCue, 223 U. S. 234.
Aetna Life *v.* Moore, 231 U. S. 543.
Provident Sav. Soc. *v.* Kentucky, 239 U. S. 103.
Northwestern Life *v.* Wisconsin, 247 U. S. 132.

As to an English association having the attributes of an American corporation, see:

Liverpool Ins. Co. *v.* Massachusetts, 10 Wall. 566.

Negotiable instruments are not instruments of commerce, nor is the hiring of laborers to work beyond the State interstate commerce; nor are buying and selling futures in another State nor sending apparel outside the State to be laundered and returned interstate commerce. The business of slaughtering and packing cattle, sheep, and hogs within the State, the carcasses and prod-

ucts of which were intended for transport and sale for human consumption in other States, is not interstate commerce.

The Lottery Case, 188 U. S. 369.
Williams *v.* Fears, 179 U. S. 270.
Alexander *v.* State, 86 Ga. 246.
Smith *v.* Jackson, 103 Tenn. 673.

Manufacture.—The business of manufacturing is not commerce. The court said, in Kidd *v.* Pearson (128 U. S. 20):

No distinction is more popular to the common mind or more clearly expressed in economic and political literature than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in County of Mobile *v.* Kimball (102 U. S. 671, 702), is as follows: "Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities." If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? * * * The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be local in all the details of their successful management.

See also Crescent Oil Co. *v.* Mississippi, 257 U. S. 129.

Manufacture of paper is not commerce though paper may become a subject of commerce.

International Paper Co. *v.* Massachusetts, 246 U. S. 135.

Mining.—The mining of coal is not interstate commerce; and a conspiracy to obstruct mining at particular mines, though it may prevent coal from going into interstate commerce, is not a conspiracy to restrain that commerce, within the Sherman Act, unless an intention to restrain it be proved.

United Mine Workers *v.* Coronado Co., 259 U. S. 344.

The mining of ore, even when substantially all of the ore mined is immediately and continuously loaded on cars and shipped into other States to satisfy existing contracts, is not interstate commerce and is subject to local taxation.

Oliver Iron Co. *v.* Lord, 262 U. S. 172.

Articles made by women and children.—Watson on the Constitution (p. 523) says:

> Closely akin to the question of regulating manufacturing is the question whether Congress can forbid the hauling of a commodity by a carrier of interstate commerce which was manufactured in a State, for instance, by women or children under a certain age, as has recently been maintained. This question is of far-reaching effect, and if such power exists in Congress it would result in the most complete invasion of the sovereignty of the States by the General Government which has ever been accomplished under the Federal Constitution.
>
> Kidd *v.* Pearson, 128 U. S. 20.
> Gibbons *v.* Ogden, 9 Wheat. 1.

In Hammer *v.* Dagenhart (247 U. S. 251) it was held that the child labor law can not be sustained on the theory that Congress has power to control interstate commerce in the shipment of child-made goods because of the effect of such goods in States where the evil of child labor has been recognized by local legislation and the right to employ child labor has been more rigorously restrained than in the State of production.

See also Bailey *v.* Drexel Furn. Co., 259 U. S. 20, in which act imposing tax on child-labor-made goods was declared unconstitutional.

Suppression of monopoly.—The argument in U. S. *v.* Knight Company (156 U. S. 1) was that the power to control the manufacture of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that, therefore, the General Government in the exercise of the power to regulate commerce may repress such monopoly directly and set aside the instruments which have created it. But the court said:

> This argument can not be confined to necessaries of life merely, and must include all articles of general consumption. Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce. It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed.

Acquisition, control, and disposition of property.—Congress certainly has not the power or authority under the commerce clause, or any other provision of the Constitution, to limit and restrict the right of corporations created by the States, or the citizens of the States, in the acquisition, control, and the dispo-

sition of property. Neither can Congress regulate or prescribe the price or prices at which such property, or the products thereof, shall be sold by the owner, or owners, whether corporations or individuals. It is equally clear that Congress has no jurisdiction over, and can not make criminal, the aims, purposes, and intentions of persons in the acquisition and control of property, which the States of their residence or creation sanction and permit.

In re Greene, 52 Fed. 104.
Weeds *v.* U. S., 255 U. S. 109.

Delivery on agents' orders.—The business of taking orders on commission for the purchase and sale of grain and cotton for future delivery and transmitting them to other States is not interstate commerce.

Ware & Leland *v.* Mobile County, 209 U. S. 405.

Live-stock commission merchants.—A live-stock commission merchant whose place of business is at a certain stockyards in a city and who there buys and sells stock for others is not engaged in interstate commerce, within the meaning of the antitrust statute, although the stock may have been shipped from another State, consigned to him for sale, and may be sold for shipment to another State or a foreign country.

Hopkins *v.* U. S., 171 U. S. 578.

The delivery of coupons, etc., redeemable in premiums in connection with retail sales of merchandise held not interstate commerce, though coupons are inserted in the retail packages and are redeemable outside the State.

Rast *v.* Van Deman, 240 U. S. 342.

Foreign holding corporation whose local activities were confined to holding stockholders' and directors' meetings, keeping records, distributing dividends, etc., was not engaged in interstate commerce.

Cheney Bros. Co. *v.* Massachusetts, 246 U. S. 147.

Press dispatch business is not commerce.

Associated Press *v.* Commonwealth, 60 S. W. 295.

A loan of money by a foreign corporation to a citizen of Alabama is not a matter of interstate commerce, but is subject to the restrictions imposed on foreign corporations by the laws of Alabama.

Nelms *v.* Edinburgh-American, etc., Co., 9 So. 141.

The retailing of liquors on a steamboat while at its landing, though the boat is engaged in interstate commerce, is not itself interstate commerce.

Foppiano *v.* Speed, 82 S. W. 222.
Harrell *v.* Speed, 81 S. W. 840.

Powers Remaining in the States—Intrastate Commerce

In General

The power which the Constitution bestows upon Congress over commerce does not exhaust the subject of the control of commerce, for there is a commerce which lies beyond the power of Congress to control. The States have a commerce of their own and they are as supreme in its control as Congress is supreme in the control of interstate and foreign commerce. This has never been disputed since the case of Gibbons *v.* Ogden (9 Wheat. 1).

Lord *v.* Steamship Co., 102 U. S. 543.

See also—

License Cases, 5 How. 574.
Norris *v.* Boston, 7 How. 415.
Sinnot *v.* Davenport, 22 How. 243.
Hall *v.* De Cuir, 95 U. S. 488.
Addyston Pipe, etc., Co. *v.* U. S., 175 U. S. 247.
Minnesota Rate Cases, 230 U. S. 352.
Houston, etc., R. Co. *v.* U. S., 234 U. S. 342.

Concurrent Powers of Congress and the States

In the Passenger Cases (7 How. 396) the court said that a concurrent power in the States to regulate commerce is an anomaly not found in the Constitution. If such power exist, it may be exercised independently of the Federal authority. A concurrent power excludes the idea of a dependent power. The General Government and the State exercise concurrent powers in taxing the people of the State. The objects of taxation may be the same, but the motives and policy of the tax are different and the powers are distinct and independent. The report continues:

A concurrent power in two distinct sovereignties to regulate the same thing is as inconsistent in principle as it is impracticable in action. It involves a moral and physical impossibility. A joint action is not supposed, and two independent wills can not do the same thing. The action of one, unless there be an arrangement, must necessarily precede the action of the other; and that which is first, being competent, must establish the rule. If the powers be equal, as must be the case, both being sovereign, one may undo what the other does, and this must be the result of their action. But the argument is that a State acting in a subordinate capacity wholly inconsistent with its sovereignty may regulate foreign commerce until Congress shall act on the same subject, and that the State must then yield to the paramount authority. A jealousy of the Federal powers has often been expressed and an apprehension entertained that they would impair the sovereignty of the States. But this argument degrades the States by making their legislation, to the extent stated, subject to the will of Congress.

See also—

Gulf, etc., R. Co. *v.* Hefley, 158 U. S. 98.
Missouri, etc., R. Co. *v.* Harris, 234 U. S. 412.
Erie, etc., R. Co. *v.* New York, 233 U. S. 671.
Savage *v.* Jones, 225 U. S. 501.

When States May Exercise Power

The power to regulate commerce among the States is a unit, but if particular subjects within its operation do not require the application of a general or uniform system, the States may legislate in regard to them with a view to local needs and circumstances until Congress otherwise directs; but the power thus exercised by the States is not identical in its extent with the power to regulate commerce among the States. The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries, and highways belongs to the class of powers pertaining to locality, essential to local intercommunication, to the progress and development of local prosperity, and to the protection, the safety, and the welfare of society, originally necessarily belonging to, and upon the adoption of the Constitution reserved by, the States, except so far as falling within the scope of a power confided to the General Government. Where the subject matter requires a uniform system as between the States, the power controlling it is vested exclusively in Congress and can not be encroached upon by the States; but where in relation to the subject matter different rules may be suitable for different localities, the States may exercise powers which, though they may be said to partake of the nature of the power granted to the General Government, are strictly not such, but are simply local powers, which have full operation until or unless circumscribed by the action of Congress.

Leisy *v.* Hardin, 135 U. S. 108.
See also—
Minnesota Rate Cases, 230 U. S. 352.
Southern R. Co. *v.* Reid, 222 U. S. 424.
Escanaba, etc., Transp. Co. *v.* Chicago, 107 U. S. 683.
County of Mobile *v.* Kimball, 102 U. S. 698.
Gilman *v.* Philadelphia, 3 Wall. 726.
Cardwell *v.* Bridge Company, 113 U. S. 210.

Police Powers of the States

In general.—Consistent with the power of Congress to regulate commerce, the States possess, because it was reserved, the power to protect the public health, the public morals, and the public safety by any legislation appropriate to that end which does not encroach upon rights guaranteed by the National Constitution nor come in conflict with acts of Congress.

Missouri, etc., R. Co. *v.* Haber, 169 U. S. 628.
See also—
Sioux Remedy Co. *v.* Cope, 235 U. S. 197.
McLean *v.* Denver, etc., R. Co., 203 U. S. 38.
Houston, etc., R. Co. *v.* Mayes, 201 U. S. 321.
Bowman *v.* Chicago, etc., R. Co., 125 U. S. 489.
Robbins *v.* Shelby County, 120 U. S. 493.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 215.
Railroad Co. *v.* Husen, 95 U. S. 470.

Lake Shore, etc., R. Co. *v.* Ohio, 173 U. S. 292.
New York *v.* Miln, 11 Pet. 138, on certificate of division of opinion in 2 Paine (U. S.), 429. This case has been discredited in opinions in subsequent cases, notably in Henderson *v.* New York, 92 U. S. 265.

In the absence of legislation by Congress.—While the laws of the State must yield to acts of Congress passed in execution of the powers conferred upon it by the Constitution, the mere grant to Congress of the power to regulate commerce did not of itself and without legislation by Congress impair the authority of the States to establish such reasonable regulations as were appropriate for the protection of the health, the lives, and the safety of their people.

New York, etc., R. Co. *v.* New York, 165 U. S. 631.
See also—
Sligh *v.* Kirkwood, 237 U. S. 52.
Southern R. Co. *v.* Reid, 222 U. S. 424.
Minnesota Rate Cases, 230 U. S. 352.
Austin *v.* Tennessee, 179 U. S. 362.

Burden upon interstate commerce.—The State can do nothing which will directly burden or impede interstate commerce, and the police power does not justify a direct interference with such commerce.

Kansas City, etc., R. Co. *v.* Kaw Valley, 233 U. S. 75.
Illinois Cent. R. Co. *v.* Illinois, 163 U. S. 142.
McDermott *v.* Wisconsin, 228 U. S. 115.
Savage *v.* Jones, 225 U. S. 501.
Brennan *v.* Titusville, 153 U. S. 299.
Schollenberger *v.* Pennsylvania, 171 U. S. 12.
Lemke *v.* Farmers Grain Co., 258 U. S. 50.

A State may make valid enactments in the exercise of its legislative power to promote the welfare and convenience of its citizens, although in their operation they may have an effect upon interstate commerce.

Pennsylvania R. Co. *v.* Hughes, 191 U. S. 488.
See also—
South Covington, etc., R. Co. *v.* Covington, 235 U. S. 537.
Asbell *v.* Kansas, 209 U. S. 251.
Sherlock *v.* Alling, 93 U. S. 103.
Louisville, etc., R. Co. *v.* Kentucky, 183 U. S. 518.
License Cases, 5 How. 599, and adopted by the court in In re Rahrer, 140 U. S. 545, as to the distinction between the incidental regulation of commerce admissible under the reserved police power of the States and the power of commercial regulation delegated to Congress.

Effect of action by Congress.—Generally it may be said in respect to laws of this character that, though resting upon the police power of the State, they must yield whenever Congress, in the exercise of the powers granted to it, legislates upon the precise subject matter, for that power, like all other reserved

powers of the States, is subordinate to those in terms conferred by the Constitution upon the Nation.

Gulf, etc., R. Co. *v.* Hefley, 158 U. S. 104.
Chicago, etc., R. Co. *v.* Hardwick, 226 U. S. 426.
Missouri, etc., R. Co. *v.* Haber, 169 U. S. 627.
Michigan Cent. R. Co. *v.* Vreeland, 227 U. S. 59.

Even when an act of Congress does not go into effect until a certain time following its passage, State legislation is immediately superseded upon the enactment of the Federal statute.

Northern Pac. R. Co. *v.* Washington, 222 U. S. 370.

An unconstitutional act of Congress does not so manifest a purpose to take control of the subject matter of the statute as to supersede State legislation on the same subject; a void statute is not law for any purpose.

Chicago, etc., R. Co. *v.* Hackett, 228 U. S. 559.

See also—

U. S. *v.* Dewitt, 9 Wall. 41, in which the act of Congress of March 2, 1867, making it a misdemeanor to sell oil for illuminating purposes inflammable at a temperature of less than 110° F., was held unconstitutional as being merely a police regulation of trade within the State.

Effect of delegation of power to Interstate Commerce Commission.—The fact that Congress has intrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce, and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the State in these incidental matters. A mere delegation by Congress to the commission of a like power has no greater effect, and does not of itself disturb the authority of the State.

Missouri Pac. R. Co. *v.* Larabee, 211 U. S. 612.

Effect of nonaction by Congress.—Where the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the States, except in matters of local concern only, is repugnant to such freedom.

Robbins *v.* Shelby County, 120 U. S. 493.

See also—

Southern R. Co. *v.* Reid, 222 U. S. 424.
Western Union *v.* James, 162 U. S. 655.
U. S. *v.* Knight, 156 U. S. 11.
Pittsburgh, etc., Coal Co. *v.* Bates, 156 U. S. 588.
In re Rahrer, 140 U. S. 555.
Leisy *v.* Hardin, 135 U. S. 110.
Philadelphia, etc., S. S. Co. *v.* Pennsylvania, 122 U. S. 336.
Walling *v.* Michigan, 116 U. S. 455.
Escanaba Co. *v.* Chicago, 107 U. S. 687.
Welton *v.* Missouri, 91 U. S. 282.
Brennan *v.* Titusville, 153 U. S. 302.
Bowman *v.* Chicago, etc., R. Co., 125 U. S. 482.

Smith *v.* Alabama, 124 U. S. 473.
Ex parte Siebold, 100 U. S. 385.
Mobile County *v.* Kimball, 102 U. S. 699.
Ouachita, etc., Packet Co. *v.* Aiken, 121 U. S. 444.
Chicago, etc., R. Co. *v.* Hardwick, 226 U. S. 426.
Hendrick *v.* Maryland, 235 U. S. 610.

A regulation of interstate commerce which would be valid if rested upon the common law of the State is no less valid because made by a State statute.

Western Union *v.* Commercial Milling Co., 218 U. S. 406.

Any act of a State interfering in any way with the free traffic between citizens of different States in any article of commerce is an attempted regulation of such commerce and an invasion of the power exclusively conferred upon Congress, whose nonaction with respect to any particular commodity is a declaration of its purpose that the commerce therein shall be free.

Minnesota *v.* Barber, 136 U. S. 313.

Internal commerce.—A State has power to regulate its internal commerce unless what is done amounts to a regulation of interstate and foreign commerce.

Railroad Commission Cases, 116 U S. 307.
Peik *v.* Chicago, etc., R. Co., 94 U. S. 164.
Passenger Cases, 7 How. 283.
Covington, etc., Brdg. Co. *v.* Kentucky, 154 U. S. 209.
Western Union *v.* Kansas, 216 U. S. 1.
Pennsylvania R. Co. *v.* Knight, 192 U. S. 27.

The exemption of interstate and foreign commerce from State regulation does not prevent a State from taxing the property of those engaged in such commerce located within the State as the property of other citizens is taxed, nor from regulating matters of local concern which may incidentally affect commerce, such as wharfage, pilotage, and the like.

Leloup *v.* Mobile, 127 U. S. 649.

The effect on interstate commerce of requiring under State authority that an interstate carrier move local freight between private spurs in the same city is so indirect that it can not be deemed to deprive the carrier of rights secured by the commerce clause.

Louisville, etc., R. Co. *v.* Higdon, 234 U. S. 592.

Any State statute which, in its direct result, regulates the interstate transportation of a single individual carrier violates the commerce clause.

Louisville, etc., R. Co. *v.* Eubank, 184 U. S. 27.
U. S. *v.* Delaware & H. Co., 213 U. S. 366.
Hampton *v.* St. Louis, etc., R. Co., 227 U. S. 456.

Quarantine and health laws.—In giving the commercial power to Congress the States did not part with that power of self-preservation which must be inherent in every organized community. They may guard against the introduction of anything

which may corrupt the morals or endanger the health or lives of their citizens. Quarantine or health laws have been passed by the States, and regulations of police made, for their protection and welfare.

Passenger Cases, 7 How. 400.
Louisiana *v.* Texas, 176 U. S. 21.
Minnesota *v.* Barber, 136 U. S. 319.
Compagnie Francaise, etc., *v.* Louisiana, 186 U. S. 385.
Reid *v.* Colorado, 187 U. S. 151.
Asbell *v.* Kansas, 209 U. S. 251.
Railroad Co. *v.* Husen, 95 U. S. 471.
Kimmish *v.* Ball, 129 U. S. 220.
Rasmussen *v.* Idaho, 181 U. S. 198.
Smith *v.* St. Louis, etc., R. Co., 181 U. S. 248.
Missouri, etc., R. Co. *v.* Haber, 169 U. S. 636.
Morgan *v.* Louisiana, 118 U. S. 465.
Peete *v.* Morgan, 19 Wall. 581.

The States may provide by law suitable measures to prevent the introduction into the States of articles of trade which, on account of their existing condition, will bring in and spread disease, for such articles are not merchantable, and are not legitimate subjects of trade and commerce.

Bowman *v.* Chicago, etc., R. Co., 125 U. S. 465.

In Cook *v.* Marshall County (196 U. S. 272) it was said that the commerce clause—

was adopted that all the States might have the benefit of the duties collected at the maritime ports, and to relieve them from the embarrassing restrictions imposed on the internal commerce of the country, but the same policy which authorizes the use of this power as a shield to protect commerce from the vexatious interference of the States forbids its employment as a sword to assail measures designed to promote the public health, morals, and comfort.

State and Municipal Legislation Affecting Commerce.

Adoption of construction given by State courts.—A construction or meaning attributed to the terms of a State statute by the courts of such State will, of course, be adopted by this court when called upon to decide questions arising under such legislation.

New York, etc., R. Co. *v.* Pennsylvania, 158 U. S. 431.
Gatewood *v.* North Carolina, 203 U. S. 531.
Armour Packing Co. *v.* Lacy, 200 U. S. 226.
Machinery Co. *v.* Gage, 100 U. S. 676.
Hall *v.* De Cuir, 95 U. S. 485.
Peik *v.* Chicago, etc., R. Co., 94 U. S. 178.
Olsen *v.* Smith, 195 U. S. 341.
Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 42.
Postal Tel. Cable Co. *v.* Adams, 155 U. S. 698.
Wabash, etc., R. Co. *v.* Illinois, 118 U. S. 565.
Kidd *v.* Pearson, 128 U. S. 15.

Constraints of commerce.—No State can endow any of its corporations or any combination of its citizens with authority to

restrain interstate or international commerce or to disobey the national will as manifested in legal enactments of Congress.

Northern Securities Co. *v.* U. S., 193 U. S. 350.
Evansville Brew. Assn. *v.* Excise Commission, 225 Fed. 204.

Discrimination against foreign products.—Any local regulation which, in terms or by its necessary operation, denies to owners of articles of commerce in other States the right to compete in the markets of the State upon terms of equality with the owners of like articles within the State, "is, when applied to the people and products or industries of other States, a direct burden upon commerce among the States and therefore void."

Brimmer *v.* Rebman, 138 U. S. 82.
Voight *v.* Wright, 141 U. S. 62.
Webber *v.* Virginia, 103 U. S. 351.

The specification of a particular asphalt for a municipal improvement, the asphalt being the product of a foreign country and there being other deposits in other States within the United States from which suitable asphalt could be had, is not an interference with, and a regulation of, interstate commerce, in violation of the exclusive right of Congress.

Field *v.* Barber, etc., Co., 194 U. S. 622.

Inspection laws.[1]—This provision does not prohibit a State from establishing inspection, quarantine, health, and other regulations to govern the ports of the State.

Foster *v.* New Orleans, 94 U. S. 246.
Red "C" Oil Co. *v.* North Carolina, 222 U. S. 380.
McLean *v.* Denver, etc., R. Co., 203 U. S. 38.
Arbuckle *v.* Blackburn, 191 U. S. 414.
Pittsburg, etc., Co. *v.* Louisiana, 156 U. S. 597.
Savage *v.* Jones, 225 U. S. 501.
Vance *v.* Vandercook Co., 170 U. S. 455.
Turner *v.* Maryland, 107 U. S. 55.
Standard, etc., Co. *v.* Wright, 225 U. S. 540.
Hinson *v.* Lott, 8 Wall. 148.
Scott *v.* Donald, 165 U. S. 58.
Pabst Brewing Co. *v.* Crenshaw, 198 U. S. 17.
Mutual Film Corp. *v.* Ohio, 236 U. S. 230.

It is competent for a State to enact a statute providing for the inspection of fertilizing materials in order to prevent the practice of imposition on the people of the State, and to provide for the charge of a certain price per ton merely to defray the cost of such inspection.

Patapsco Guano Co. *v.* North Carolina, 171 U. S. 345.
Foote *v.* Maryland, 232 U. S. 494.
Pure Oil Co. *v.* Minnesota, 248 U. S. 158.
Standard Oil Co. *v.* Graves, 249 U. S. 389.

[1] See also Art. I, sec. 10, cl. 2, p. 364.

Railroads and express companies—*In general.*—Until Congress acts in reference to the relations of the railroad companies to interstate commerce, it is within the power of the State to regulate its affairs, so far as they are of domestic concern.

Peik *v.* Chicago, etc., R. Co., 94 U. S. 164.
New York, etc., R. Co. *v.* New York, 165 U. S. 628.
Erb *v.* Morasch, 177 U. S. 584.
Chicago, etc., R. Co. *v.* Hackett, 228 U. S. 559.

Where a railroad extends through several States and is incorporated in each, it is, as far as concerns the regulation of its business within the State, a domestic corporation; and the establishment of a board of railroad commissioners with power to regulate traffic, fix charges, and prevent discriminations, but prohibited from interfering with charges for transportation of persons or property interstate, is not invalid as being a regulation of interstate commerce.

Railroad Commission Cases, 116 U. S. 307.

Consolidation of railroads.—A State law prohibiting the consolidation of parallel and competing roads does not conflict with the commerce clause.

Mobile, etc., R. Co. *v.* Mississippi, 210 U. S. 187.
Louisville, etc., R. Co. *v.* Kentucky, 161 U. S. 702.

Contracts of carriage.—A statute providing that "when a common carrier accepts for transportation anything directed to a point of destination beyond the terminus of his own line or route, he shall be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless at the time of such acceptance such carrier be released or exempted from such liability by contract in writing signed by the owner or his agent; and although there be such contract in writing, if such thing be lost or injured, such common carrier shall himself be liable therefor, unless, within a reasonable time after the demand made, he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge," does not attempt to substantially regulate or control contracts as to interstate shipments, but simply establishes a rule of evidence ordaining the character of proof by which a carrier may show that, although it received goods for transportation beyond its own line, nevertheless, by agreement, its liability was limited to its own line.

Richmond, etc., R. Co. *v.* Patterson Tob. Co., 169 U. S. 312.
Missouri, etc., R. Co. *v.* McCann, 174 U S. 587.
Chicago, etc., R. Co. *v.* Solan, 169 U. S. 133.
Pennsylvania R. Co. *v.* Hughes, 191 U. S. 491.

Solicitation of freight.—A State statute which provides that any foreign corporation having an agent in the State for the solicitation of freight and passenger traffic over lines outside the State may be served with summons by delivering a copy thereof

to such agent imposes an unreasonable burden on interstate commerce and is void under this clause as applied to an action brought against a railroad company which neither owns nor operates a railroad within the State by a plaintiff who does not and did not reside there, upon a cause of action which arose elsewhere.

Davis *v.* Farmers' Cooperative Co., 262 U. S. 312.

Effect of Carmack amendment.—The so-called Carmack amendment to the act to regulate commerce supersedes State statutes invalidating contracts limiting recovery for loss or injury to goods in transportation to an agreed or declared value.

Atchison, etc., R. Co. *v.* Harold, 241 U. S. 371.
Chicago, etc., R. Co. *v.* Cramer, 232 U. S. 490.
Adams Exp. Co. *v.* Croninger, 226 U. S. 491.
Chicago, etc., R. Co. *v.* Miller, 226 U. S. 513.

The Carmack amendment also supersedes State statutes invalidating a stipulation in a shipping contract limiting the time within which an action may be brought after damages sustained.

Missouri, etc., R. Co. *v.* Harriman, 227 U. S. 657.

Rates of transportation.—(*a*) *Power of States to prescribe intrastate rates.*—A State has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless what is done amounts to a regulation of interstate or foreign commerce.

Railroad Commission Cases, 116 U. S. 307.
Georgia, etc., R. Co. *v.* Smith, 128 U. S. 174.
Peik *v.* Chicago, etc., R. Co., 94 U. S. 178.
Chicago, etc., R. Co. *v.* Iowa, 94 U. S. 161.

A railroad corporation organized under the laws of the United States is subject to the control of the State in all matters of taxation, rates for transportation, and other police regulations when there is nothing in the act of Congress creating it which indicates an intention on the part of Congress to remove it in all its operations from the control of the State, and there is nothing prescribed by State statute which will disable the corporation from discharging all the duties and exercising all the powers conferred by Congress.

Reagan *v.* Mercantile Trust Co., 154 U. S. 416.

Congress has not interfered with the power of the States to regulate intrastate rates in the interstate commerce act and its amendments.

Minnesota Rate Cases, 230 U. S. 352.
Missouri Rate Cases, 230 U. S. 474.
Ohio *v.* Worthington, 225 U. S. 101.

But see Houston, etc., R. Co. *v.* U. S. (234 U. S. 342), in which it was held that State-made rates must yield where they conflict with interstate rates and are a burden to interstate commerce.

(*b*) *Requiring railroads to post their schedules of rates.*—State law requiring railroad companies to post up their rates of fare and freight and imposing penalties for nonobservance is not a regulation of commerce but is valid as a police regulation.

Railroad Co. *v.* Fuller, 17 Wall. 560.

Statute providing for the collection of amount specified in the bill of lading held inconsistent with provision of interstate commerce act requiring collection of rates specified in published tariff schedules.

Gulf, etc., R. Co. *v.* Hefley, 158 U. S. 98.

The State legislature may authorize its railroad commission to reduce as unreasonable a joint through rate agreed upon by two or more railroads and apportion the same among the several railroads interested.

Minneapolis, etc., R. Co. *v.* Minnesota, 186 U. S. 257.
Alabama, etc., R. Co. *v.* Mississippi, 203 U. S. 496.
Grand Trunk R. Co. *v.* Michigan, 231 U. S. 457.
Stone *v.* Illinois Cent. R. Co., 116 U. S. 347.

In establishing local rates for an interstate carrier a State must be assumed to intend to act within the limits set by the Federal Constitution.

Rowland *v.* St. Louis, etc., R. Co., 244 U. S. 106.

State's authority to regulate infrastate rates of interstate carriers may be exercised through commissions.

Pennsylvania R. Co. *v.* Towers, 245 U. S. 6.

(*c*) *Lack of power to regulate interstate rates.*—Since the decision in Wabash, etc., R. Co. *v.* Illinois (118 U. S. 557), it must be regarded as settled, whatever doubts may have been previously entertained, that a regulation, as by prescribing rates, of such transportation as is deemed interstate as distinguished from wholly domestic carriage is exclusively given to Congress.

Wilmington Transp. Co. *v.* California, 236 U. S. 151.
Ohio *v.* Worthington, 225 U. S. 101.

State statutes regulating rates must have reference only to the intrastate proportion of the value of the property.

Louisville, etc., R. Co. *v.* Railroad Comm., 196 Fed. 800, citing Smyth *v.* Ames, 169 U. S. 466.

(*d*) *Incidental effect on interstate rates.*[1]—In the absence of action by Congress the reduction of intrastate rates below the level of interstate rates in those instances in which they had been maintained on a parity in competitive areas crossed by a State line, so as to alter the existing relations between State and inter-

[1] See also for comparison "Exclusive powers of Congress—Incidental control of intrastate rates," p. 98.

state rates as to places within those zones of competition, does not render such State rates invalid.

Chicago, etc., R. Co. *v.* Public Utilities Comm., 242 U. S. 333.
Minnesota Rate Cases, 230 U. S. 352.
Missouri Rate Cases, 230 U. S. 474.
Chesapeake, etc., R. Co. *v.* Conley, 230 U. S. 513.
Oregon, etc., R. Co. *v.* Campbell, 230 U. S. 525.
Southern Pac. Co. *v.* Campbell, 230 U. S. 537.
Allen *v.* St. Louis, etc., R. Co., 230 U. S. 553.

(*e*) *Interstate passes.*—A State statute prohibiting a railway company from giving free passes or free transportation, but authorizing the issue of transportation in payment for printing and advertising, can not, as to the exception, be allowed to operate in view of the act of Congress prohibiting free interstate transportation.

Chicago, etc., R. Co. *v.* U. S., 219 U. S. 486.

(*f*) *Establishing joint through rates.*—A State statute creating a railroad and warehouse commission and defining its duties, is constitutional in so far as it assumes to establish joint through rates over the lines of independent connecting railroads within the State, and by virtue of which it assumes to arbitrarily apportion and divide joint earnings.

Minneapolis, etc., R. Co. *v.* Minnesota, 186 U. S. 260.

(*g*) *Rates on the part of interstate shipment within the State.*—If transportation be partly within and partly without, the State can not regulate that within and leave the Federal power to act on that without, but has no control whatever over the charges for such a transportation. It is the very nature of the thing itself, not local or of domestic concern, and the States have no more power by such a construction or characterization to regulate the rates by uniform legislation than they have to so regulate the rates of postage or the weights of coins. That Congress refrains from establishing such uniform regulation only indicates an expression of the Federal will that the rates shall be left to regulate themselves under the ordinary economic laws that govern the commerce between the States.

Louisville, etc., R. Co. *v.* Railroad Commission, 19 Fed. 702, but this case was decided in 1884, prior to the enactment of the act to regulate commerce.

See also—

Kaeiser *v.* Illinois Cent. R. Co., 18 Fed. 151.

State statute attempting to prohibit discrimination in rates as applied to long and short hauls on interstate transporation held void.

Wabash, etc., R. Co. *v.* Illinois, 118 U. S. 577.
Railroad Commission Cases, 116 U. S. 325.
Illinois Cent. R. Co. *v.* Stone, 20 Fed. 468.
Atchison, etc., R. Co. *v.* Denver, etc., R. Co., 110 U. S. 667.

States may prohibit discrimination on the long-and-short-haul theory if the regulations are restricted to those who own or operate a railroad within the State.

Louisville, etc., R. Co. *v.* Kentucky, 183 U. S. 511.
Missouri Pac. R. Co. *v.* McGrew Coal Co., 244 U. S. 191.
Louisville, etc., R. Co. *v.* Eubank, 184 U. S. 33.
Missouri Pac. R. Co. *v.* McGrew Coal Co., 256 U. S. 134.

(*h*) *Tickets and mileage books.*—A Michigan statute requiring one-thousand-mile tickets to be kept for sale at the principal ticket offices at a stipulated price, held invalid as depriving railroads of property without due process of law.

Lake Shore, etc., R. Co. *v.* Smith, 173 U. S. 684; followed by Beardsley *v.* New York, etc., R. Co., 162 N. Y. 230.

Running of trains—(*a*) *Regulating speed of trains.*—It is within the undoubted province of a State to make regulations with regard to all operations of trains and in which the lives and health of people are concerned, even though such regulations affect to some extent the operations of interstate commerce. Such regulations are eminently local in their character, and, in the absence of congressional regulations over the same subject, are free from all constitutional objections and unquestionably valid.

Crutcher *v.* Kentucky, 141 U. S. 61.
Erb *v.* Morasch, 177 U. S. 584.
Hennington *v.* Georgia, 163 U. S. 299.

(*b*) *Regulating stoppage of trains.*—A statute requiring every regular passenger train, running wholly within the limits of the State, to stop at all stations of county seats directly in its course for a sufficient length of time to take on and discharge passengers, is a reasonable exercise of the police power of the State and is not an unconstitutional interference with interstate commerce.

Gladson *v.* Minnesota, 166 U. S. 430.

A State statute which requires every passenger train, regardless of the number of such trains passing each way daily, and of the character of the traffic carried by them, to stop at every county seat through which such trains may pass by day or night, and regardless also of the fact whether another train designated especially for local traffic may stop at the same station within a few minutes before or after the arrival of the train in question, is a direct burden upon interstate commerce.

Cleveland, etc., R. Co. *v.* Illinois, 177 U. S. 521.
See also—
Illinois Cent. R. Co. *v.* Illinois, 163 U. S. 153.
Lake Shore, etc., R. Co. *v.* Ohio, 173 U. S. 285.
Mississippi *v.* Illinois Cent. R. Co., 203 U. S. 335.
Atlantic, etc., R. Co. *v.* Wharton, 207 U. S. 328.
Herndon *v.* Chicago, etc., R. Co., 218 U. S. 135.
Chicago, etc., R. Co. *v.* Wisconsin, 237 U. S. 220.
Missouri Pac. R. Co. *v.* Kansas, 216 U. S. 262.
Missouri, etc., R. Co. *v.* Texas, 245 U. S. 484.
Gulf, etc., R. Co. *v.* Texas, 246 U. S. 58.
St. Louis, etc., R. Co. *v.* Missouri, 254 U. S. 535.
St. Louis-San Francisco Ry. *v.* Public Serv. Comm., 261 U. S. 369

(*c*) *Regulating number in train crew.*—A statute penalizing the operation of a freight train of more than 25 cars without having such train equipped with as many as three brakemen is not invalid as a regulation of commerce.

Chicago, etc., R. Co. *v.* Arkansas, 219 U. S. 453.
St. Louis, etc., R. Co. *v.* Arkansas, 240 U. S. 518.

(*d*) *Requiring use of electric headlight.*—A statute requiring railroad companies to use electric headlights of not less than a certain capacity is valid.

Atlantic, etc., R. Co. *v.* Georgia, 234 U. S. 280.
Vandalia R. Co. *v.* Indiana, 242 U. S. 255.
Baltimore, etc., R. Co. *v.* Railroad Comm., 196 Fed. 690.

States may make regulations to be observed at crossings in case such regulations do not impose a burden on interstate commerce.

Southern R. Co. *v.* King, 217 U. S. 524.
Seaboard, etc., R. Co. *v.* Blackwell, 244 U. S. 310.
Erie R. Co. *v.* New Jersey, 254 U. S. 394.

(*e*) *Examining and licensing trainmen.*—A State may regulate this subject, unless such regulation burdens or impedes interstate commerce, in the absence of express enactment of Congress.

Smith *v.* Alabama, 124 U. S. 480.
McCall *v.* California, 136 U. S. 104.
Nashville, etc., R. Co. *v.* Alabama, 128 U. S. 96.
Missouri, etc., R. Co. *v.* Haber, 169 U. S. 633.

(*f*) *Requiring railroads to pay employees semimonthly.*—A statute requiring semimonthly payment of wages of railway employees, both State and interstate, has merely an incidental effect on interstate commerce and is valid.

Erie R. Co. *v.* Williams, 233 U. S. 685.

(*g*) *Hours of service.*—State statutes regulating the hours of service of railway employees are superseded by the Federal hours of service act of March 4, 1907.

Erie R. Co. *v.* New York, 233 U. S. 671.
Northern Pac. R. Co. *v.* Washington, 222 U. S. 370.

(*h*) *Heating passenger cars.*—A statute is valid which forbids under penalty the heating of passenger cars in the State by stoves or furnaces kept inside the car or suspended therefrom, although such cars may be employed in interstate commerce, in the absence of congressional action.

New York, etc., R. Co. *v.* New York, 165 U. S. 629.

(*i*) *Accommodations for different races.*[1]—Statute which requires railroad companies operating within the State to furnish separate coaches or cars for the transportation of white and colored passengers is not invalid so far as it is applicable to passengers traveling between two points in the State.

Chesapeake, etc., R. Co. *v.* Kentucky, 179 U. S. 388.
McCabe *v.* Atchison, etc., R. Co., 235 U. S. 151.
Louisville, etc., R. Co. *v.* Mississippi, 133 U. S. 588.

[1] See same subject under "Commerce Among the States," p. 116.

In Anderson *v.* Louisville, etc., R. Co. (62 Fed. 46) it was held that a State statute so broad as to cover both State and interstate transportation is void.

But in Smith *v.* State (100 Tenn. 494) it was held that a similar statute is a reasonable police regulation, applies to both intrastate and interstate travel, and is not obnoxious to the commerce clause.

In Chiles *v.* Chesapeake, etc., R. Co. (218 U. S. 71) it was said, in effect, that the inaction of Congress is equivalent to a declaration that a carrier can, by regulations, separate white and colored interstate passengers.

In Hall *v.* De Cuir (95 U. S. 487) it was held that a State statute which, as construed by the supreme court of the State, requires those engaged in interstate commerce to give all persons traveling in that State upon the public conveyances employed in such business equal rights and privileges in all parts of the conveyances, without distinction or discrimination on account of race or color, is invalid as a regulation of interstate commerce.

Street railway may be required by State statute to furnish either separate cars or separate compartments in the same car for white and negro passengers, although its principal business is the carriage of interstate passengers.

South Covington, etc., R. Co. *v.* Kentucky, 252 U. S. 399.

(*j*) *No obligation to operate at a loss.*—Texas statute requiring all railroads carrying passengers for hire to run certain passenger trains and make certain stops, etc., is a mere regulation of passenger service, and does not subject railroad company, through charter contract or otherwise, to an absolute duty to operate for its full charter period in face of a reasonable certainty of pronounced loss.

Railroad Comm. *v.* Eastern Texas R. R., 264 U. S. 79.

Liability for acts of nonfeasance or misfeasance.—(*a*) *In general.*—Until Congress has legislated upon the subject, the liability of such a carrier, exercising its calling within a particular State, although engaged in the business of interstate commerce, for loss or damage to such property, may be regulated by the law of the State. Such regulations would fall within that class of regulations which it is competent for a State to make in the territorial jurisdiction of the State over such carriers and its duty and power to safeguard the general public against acts of misfeasance and nonfeasance committed within its limits, although interstate commerce may be indirectly affected.

Adams Exp. Co. *v.* Croninger, 226 U. S. 491.
Chicago, etc., R. Co. *v.* Solan, 169 U. S. 137.
Smith *v.* Alabama, 124 U. S. 476.

(*b*) *Employers' liability act.*—The Federal employers' liability acts supersede the laws of the States on the same subject.

Second Employers' Liability Cases, 223 U. S. 1.
Chicago, etc., R. Co. *v.* Devine, 239 U. S. 52.
Wabash R. Co. *v.* Hayes, 234 U. S. 86.
Seaboard, etc., R. Co. *v.* Horton, 233 U. S. 492.
St. Louis, etc., R. Co. *v.* Seale, 229 U. S. 156.
St. Louis, etc., R. Co. *v.* Hesterly, 228 U. S. 702.
Taylor *v.* Taylor, 232 U. S. 363.
New York Cent., etc., R. Co. *v.* Tonsellito, 244 U. S. 360.

(*c*) *Workmen's compensation act.*—The fact that a railroad company is in a general sense engaged in interstate commerce does not prevent the operation of a State workmen's compensation act.

New York, etc., R. Co. *v.* White, 243 U. S. 188.
Raymond *v.* Chicago, etc., R. Co., 243 U. S. 43.

In Jensen *v.* Southern Pac. Co. (215 N. Y. 514) it was held that the Federal employers' liability act does not apply to a carrier by water, and a State workmen's compensation act applies to an employee of such a carrier, which was reversed in Southern Pac. Co. *v.* Jensen (244 U. S. 205) on the ground that while the Federal employers' liability act does not apply to a carrier by water, yet a State workmen's compensation act is not applicable to an action based on a maritime tort.

See also Valley S. S. Co. *v.* Wattawa, 244 U. S. 202.

A State workmen's compensation act, requiring an employer to respond for injuries occurring where it is not chargeable with negligence, is not operative in the case of an employee engaged in interstate commerce at the time of his injury.

New York, etc., R. Co. *v.* Winfield, 244 U. S. 147.
Erie R. Co. *v.* Winfield, 244 U. S. 170.

(*d*) *A common-law right of action* is superseded by the Federal statute.

New York Cent., etc., R. Co. *v.* Tonsellito, 244 U. S. 360.

(*e*) *Safety appliance act.*—The Federal safety appliance act supersedes State statutes on the same subject.

Southern R. Co. *v.* Indiana, 236 U. S. 439.

(*f*) *Injury to postal clerk.*—State statute making a railroad company liable for injury to a railway postal clerk as if he were an employee of the railroad and not as a passenger does not, in the absence of legislation by Congress, conflict with the commerce clause.

Martin *v.* Pittsburg, etc., R. Co., 203 U. S. 284.
Pennsylvania R. Co. *v.* Hughes, 191 U. S. 477.
Chicago, etc., R. Co. *v.* Solan, 169 U. S. 134.

(*g*) *Allowance of attorney's fees.*—Statute providing for the recovery of reasonable attorney's fees in actions on small claims

against all classes of defendants, individual and corporate, is valid as applied to claims based upon freight lost in interstate commerce, in the absence of Federal legislation on the subject, and the act to regulate commerce does not interfere with such a State statute.

Missouri, etc., R. Co. *v.* Harris, 234 U. S. 412.
Chicago, etc., R. Co. *v.* Nye-Schneider-Fowler Co., 260 U. S. 35.

(*h*) *Furnishing cars.*—A statute, the material requirement of which is that when the shipper of freight shall make a requisition in writing for a number of cars to be furnished at any point indicated within a certain number of days, and shall deposit one-fourth of the freight with the agent of the company, the company failing to furnish them shall forfeit $25 per day for each such car failed to be furnished, the only proviso being that the law "shall not apply in cases of strikes or other public calamity," is invalid, as sufficient allowance is not made for the practical difficulties in the administration of the law.

Houston, etc., R. Co. *v.* Mayes, 201 U. S. 321.
Illinois Cent. R. Co. *v.* Louisiana, 236 U. S. 157.

When such a statute is construed by the State court as merely declaratory of the common law, and any reasonable excuse for a failure to furnish cars upon the requirement of a shipper may be interposed, it is valid.

Hampton *v.* St. Louis, etc., R. Co., 227 U. S. 456.
Missouri Pac. R. Co. *v.* Larabee, 211 U. S. 612.
St. Louis, etc., R. Co. *v.* Arkansas, 217 U. S. 136.

By the interstate commerce act, as amended, Congress has specifically concerned itself with the subject of furnishing cars for interstate traffic, and this supersedes any legislation by the States on that subject.

Chicago, etc., R. Co. *v.* Hardwick, 226 U. S. 426.

A statute which merely requires a railroad company to furnish cars within a reasonable time after demand made, where the question as to what is a reasonable time is to be determined in view of the requirements of interstate commerce, is valid.

Illinois Cent. R. Co. *v.* Mulberry Coal Co., 238 U. S. 275.

(*i*) *Uniform bills of lading.*—The uniform bills of lading act, construed as limited to the rights of parties under their domestic endorsements of a foreign bill of lading, is not invalid as a regulation of commerce.

Baker Co. *v.* Brown, 100 N. E. 1025.

(*j*) *Refusal to accept freight for transportation.*—Statute which penalizes a carrier which refuses to receive freight for transportation whenever tendered at a regular station is invalid as Congress had, by statute, occupied the whole field of rate making and has provided that no carrier "shall engage or participate in the transportation of passengers or property, as defined in this act, unless the rates, fares, and charges upon which the

same are transported by said carrier have been filed and published in accordance with the provisions of this act."

Southern R. Co. *v.* Reid, 222 U. S. 424.
Southern R. Co. *v.* Burlington Lbr. Co., 225 U. S. 99.
Contra—
Currie *v.* Raleigh, etc., R. Co., 47 S. E. 654.

(*k*) *Delivery of freight and express matter.*—Where a State court considered that a statute forbidding a delivery of goods except upon surrender and cancellation of the bills of lading and providing that any person aggrieved may recover all damages sustained by its violation is merely declaratory of the common law. No question of the repugnancy of the statute to the Constitution is presented.

Arkansas, etc., R. Co. *v.* German Nat. Bank, 207 U. S. 270.

Statute authorizing the recovery of a penalty for delay in giving notice to a consignee of the arrival of freight at the termination of an interstate shipment is invalid in consequence of the operation of the act to regulate commerce as amended.

St. Louis, etc., R. Co. *v.* Edwards, 227 U. S. 265.

Rule of a railroad commission authorizing the recovery of a penalty for failure to deliver freight at the depots and warehouses, or, in case of shipment for track delivery, to place loaded cars at an accessible place for unloading within 24 hours after arrival, is an unreasonable burden upon interstate commerce since the requirement as to the delivery of cars within the short period fixed in the rule is absolute and makes no allowance for any justifiable and unavoidable cause for the failure to deliver.

Yazoo, etc., R. Co. *v.* Greenwood Gro. Co., 227 U. S. 1.

Municipal ordinance requiring an express company doing business in the city to give a bond for each and every vehicle licensed, to be conditioned for the safe and prompt delivery of all baggage, packages, etc., is invalid as applied to interstate transportation.

Adams Exp. Co. *v.* New York, 232 U. S. 14.

Statute penalizing the failure of common carriers to adjust and pay within a specified time claims for loss or damage is valid as applied to an interstate shipment when the loss or damage occurred while in the possession of the carrier within the State.

Atlantic Coast Line *v.* Mazursky, 216 U. S. 122.

But such a statute is superseded by the Carmack amendment to the act to regulate commerce, as further amended by the act of June 18, 1910.

Charleston, etc., R. Co. *v.* Varnville Furn. Co., 237 U. S. 597.
See also—
Chicago, etc., R. Co. *v.* Nye-Schneider-Fowler Co., 260 U. S. 35, as to statute imposing liability for interest and attorney's fees for nonpayment of claims.

Connecting carriers.—Compelling two railroad companies to provide at a place of intersection of their two roads ample facilities by track connections for transferring any and all cars used in the regular business of the respective lines of road from the lines or tracks of one of said companies to those of the other, and to provide at such place of intersection equal and reasonable facilities for the interchange of cars and traffic, would plainly afford facilities to interstate commerce, if there were any, and would in no wise regulate such commerce within the meaning of the Constitution.

Wisconsin, etc., R. Co. *v.* Jacobson, 179 U. S. 295.
Michigan Cent. R. Co. *v.* Michigan, 236 U. S. 615.
Grand Trunk R. Co. *v.* Michigan, 231 U. S. 457.
Missouri, etc., R. Co. *v.* McCann, 174 U. S. 580.
Central Stockyards Co. *v.* Louisville, etc., R. Co., 192 U. S. 568.

Orders of State railroad commissions are void when they conflict with Federal regulations.

Illinois Cent. R. Co. *v.* Louisiana, 236 U. S. 157.

The imposition upon the initial or any connecting carrier of the duty of tracing the freight and informing the shipper in writing when, where, how, and by which carrier the freight was lost, damaged, or destroyed, and of giving the names of the parties and their official position, by whom the truths of the facts set out in the information can be established, is, when applied to interstate commerce, a violation of the commerce clause.

Central of Ga. R. Co. *v.* Murphey, 196 U. S. 202.
Richmond, etc., R. Co. *v.* Patterson Tobacco Co., 169 U. S. 312.

Switching and terminal facilities.—Interstate freight retains its character as such until the actual delivery to the consignee takes place, and an order of a State railroad commission regulating the transfer and switching of cars upon the private sidings or spur tracks of private shippers is void.

Southern R. Co. *v.* Greensboro Ice, etc., Co., 134 Fed. 82, affirmed in McNeill *v.* Southern R. Co., 202 U. S. 543.
See also—
Iowa *v.* Chicago, etc., R. Co., 33 Fed. 391.
Chicago, etc., R. Co. *v.* Becker, 32 Fed. 849.
Fielder *v.* Missouri, etc., R. Co., 42 S. W. 362.

A State can not be said, as a matter of law, to have imposed an unconstitutional burden upon interstate commerce by forbidding any change in location of the machine shops, roundhouses, and general offices of a railway company which has agreed to maintain them in a designated county in consideration of receiving county aid.

International, etc., R. Co. *v.* Anderson County, 246 U. S. 424.

State statute forbidding the switching of cars over public crossings in cities of the first and second class with a crew con-

taining less than a specified number of employees is not violative of the commerce clause.

St. Louis, etc., R. Co. *v.* Arkansas, 240 U. S. 518.

Sunday laws.—Statute which declares that transportation of freight shall be suspended on Sunday, although in a limited degree affecting interstate commerce, is not for that reason a needless intrusion upon the domain of Federal jurisdiction nor strictly a regulation of interstate commerce, but, considered in its own nature, is an ordinary police regulation and not invalid by force alone of the Constitution.

Hennington *v.* Georgia, 163 U. S. 318.

Attachment and garnishment.—Sums of money due from other carriers as the nonresident defendant carrier's share of the freight on interstate shipments are not exempt from garnishment under State laws.

Railway cars are not exempt from attachment under State laws, though they may have been or are intended to be used in interstate commerce.

Davis *v.* Cleveland, etc., R. Co., 217 U. S. 157.

Regulations affecting interstate street-car service.—Municipal ordinances which only incidentally affect interstate street-car service are valid, and therefore an ordinance which prohibits the company from allowing passengers to ride on the rear or front platforms without suitable barriers, and requiring it to keep the cars clean and ventilated and fumigated, is valid, but provisions of the ordinance that cars shall never be permitted to be below a certain temperature are unreasonable, and those provisions so regulating the number of passengers to be carried in the cars as to subject the company to varying conditions and conflicting municipal regulations are a burden on interstate commerce.

South Covington, etc., R. Co. *v.* Covington, 235 U. S. 537.

No unconstitutional interference with interstate commerce results from a municipal ordinance which directs a railway company to remove its tracks from a busy street intersection, where the ordinance makes no discrimination against interstate commerce.

Denver, etc., R. Co. *v.* Denver, 250 U. S. 241.

Natural gas.—Statute prohibiting transportation of natural gas by foreign corporation held invalid.

Oklahoma *v.* Kansas Natural Gas Co., 221 U. S. 229.
Haskell *v.* Same, 224 U. S. 217.

Until Congress acts under its superior authority, the regulation by a State public service commission of rates for natural gas transmitted directly from the source of supply outside the

State to local consumers does not offend against the commerce clause.

Pennsylvania Gas Co. *v.* Public Service Comm., 252 U. S. 23.
Public Utilities Comm. *v.* Landon, 249 U. S. 236.

Natural gas transported through pipe lines is an original package so long as it is in the main line, but it ceases to become a part of interstate commerce when it leaves the main line.

West Virginia, etc., Gas Co. *v.* Towers, 106 Atl. 265.

Telegraph and telephone companies—*Penalty for failure to transmit and deliver messages.*—Statute providing for the recovery of a penalty on failure of a telegraph company, with a line of wires wholly or partly in the State, to diligently transmit and deliver messages is a valid exercise of the power of the State in relation to messages by telegraph from points outside and directed to some point within the State.

Western Union *v.* James, 162 U. S. 650, distinguishing Western Union *v.* Pendleton, 122 U. S. 347, and Western Union *v.* Crovo, 220 U. S. 364.

A recovery in a State court of damages for mental anguish from failure to deliver a telegram in the city of Washington forwarded from South Carolina, where received, can not be authorized by State law without violating the commerce clause.

Western Union *v.* Brown, 234 U. S. 542.

Requiring wires to be placed under surface of streets.—Municipal ordinance requiring all overhead wires within a certain territory to be removed and placed in approved conduits under the surface of the streets is valid.

Western Union *v.* Richmond, 224 U. S. 160.
Western Union *v.* New York, 38 Fed. 552.

Charges on poles and wires.—A license fee upon telegraph poles and wires within the limits of a municipal corporation is not a tax on the property of the company or on its transmission of messages or on its receipts from such transmission or on its occupation or business, but it is a charge in the enforcement of local government supervision, and as such, when not unreasonable, is not obnoxious to the commerce clause.

Western Union *v.* New Hope, 187 U. S. 419.
Atlantic, etc., Tel. Co. *v.* Philadelphia, 190 U. S. 164.
St. Louis *v.* Western Union, 148 U. S. 96.
Mackay Tel., etc., Co. *v.* Little Rock, 250 U. S. 94.

Prohibiting stipulation against liability for negligence.—Statute prohibiting a stipulation against liability for negligence in the delivery of an interstate message is valid.

Western Union *v.* Commercial Milling Co., 218 U. S. 406.

Effect of act of Congress of July 24, 1866.—A State has no authority to interfere with the operation of the lines of telegraph companies constructed over postal routes within its bor-

ders under the authority of the act of Congress of July 24, 1866, but this act does not deprive the State or a municipality of the right to subject telegraph companies to reasonable regulations, and an ordinance regulating the erection and use of poles and wires in the streets does not interfere with the exercise of authority under that act.

Essex *v.* New England Tel. Co., 239 U. S. 313.
Western Union *v.* Richmond, 224 U. S. 160.
Postal Tel. Cable Co. *v.* Richmond, 249 U. S. 252.

Statute which confers upon a single corporation the exclusive right of transmitting intelligence by telegraph from a certain portion of its territory attempts to regulate commerce and conflicts with the act of Congress of July 24, 1866.

Pensacola Tel. Co. *v.* Western Union, 96 U. S. 11.

Transmission of stock quotations.—Interstate transmission of stock quotations by telegraph may not be interfered with by States to remove alleged discrimination as between brokers.

Western Union *v.* Foster, 247 U. S. 105.

Telephone companies, like telegraph companies, are important agents in the transaction of interstate commerce, and no State can grant to one telephone company the exclusive right to operate telephone lines within its borders; what a State can not do because it operates as an obstruction to the free flow of interstate commerce, an Indian nation can not do.

Muskogee Nat. Tel. Co. *v.* Hall, 118 Fed. 382.

Ships and shipping[1]—*When a vessel is engaged in domestic commerce.*—Vessels are not engaged in purely domestic commerce when their voyages between ports of the same State require them to navigate the ocean. When they go beyond the marine league they pass out of the jurisdiction of the State and come under the exclusive control of Congress.

Pacific Coast S. S. Co. *v.* Board of Comrs., 18 Fed. 10.

Engaged in lightering goods.—A steamboat enrolled and licensed for the coasting trade under an act of Congress was engaged in lightering goods from and to vessels anchored in the lower bay of Mobile and the wharves of the city, and in towing vessels anchored there to and from the city, and in some instances towing the same beyond the outer bar of the bay and into the Gulf for a distance of several miles. The port was resorted to and frequented by ships and vessels engaged in interstate and foreign commerce. It was held that the vessel was engaged in interstate and foreign commerce and not subject to State regulations.

Foster *v.* Davenport, 22 How. 244.

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[1] See also Art. III, sec. 2, "Admiralty and Maritime Jurisdiction," and citations thereunder, p. 446.

State registration laws.—Statute requiring vessels leaving a port within the State to file a statement in writing at the office of the probate judge of the county, setting forth the name of the vessel, name of the owners, etc., so far as it was made to apply to vessels engaged in the coasting trade between ports in different States, was held to be in conflict with the act of Congress providing for the enrollment and licensing of vessels engaged in the coasting trade.

Sinnot *v.* Davenport, 22 How. 227.

The enrollment and licensing of a vessel under the laws of the United States enacted under the power derived from this clause does not of itself exclude the right of a State to exact a license from her own citizens on account of their ownership and use of such property having its situs within the State.

Wiggins Ferry Co. *v.* East St. Louis, 107 U. S. 365.

Rates for water transportation.—The interstate commerce act does not cover rates for water transportation unconnected with transportation by railroad, and a State may regulate the rates which may be charged by a vessel plying between two points within the State though in its journey it passes over the high seas.

Wilmington Transp. Co. *v.* California, 236 U. S. 151.

State statutory liens on vessels.—Liens under State statutes enforceable by attachment, in suits *in personam*, may even extend to liens on vessels, when the proceedings to enforce them do not amount to admiralty proceedings *in rem*, and such a proceeding is not such a regulation of commerce among the States as to be invalid.

Johnson *v.* Chicago, etc., Co., 119 U. S. 399.

See Martin *v.* West (222 U. S. 191) with respect to a statute giving a lien for a nonmaritime tort against a foreign vessel.

Lien for material furnished for constructing vessel.—The enforcement of such a lien can not be avoided because the vessel was engaged in interstate commerce.

The *Winnebago*, 205 U. S. 354.

Navigation and navigable waters—*In general.*—In Transportation Co. *v.* Chicago (99 U. S. 643), the court said, in reference to the general authority of States over navigable waters:

Navigable waters wholly within a State are not outside of State jurisdiction so long as Congress does not interfere. An abridgment of the rights of those who have been accustomed to use them, unless it comes in conflict with the Constitution or a law of the United States, is an affair between the government of the State and its citizens, of which this court can take no cognizance.

See also—

Illinois *v.* Economy Power Co., 234 U. S. 497.
Manigault *v.* Springs, 199 U. S. 473.
Economy Light Co. *v.* U. S., 256 U. S. 113.

A compact between States to keep open the navigation of a river, when sanctioned by Congress, becomes a law of the Union.

Pennsylvania *v.* Wheeling, etc., Bridge Company, 13 How. 518.

The act of Congress admitting California as a State of the Union, which declares "that all the navigable waters within the said State shall be common highways and forever free, as well to the inhabitants of the said State as to the citizens of the United States, without any tax, impost, or duty therefor," did not deprive the State of any powers over navigable waters within her limits which the original States possessed over such waters.

Cardwell *v.* Bridge Company, 113 U. S. 210.
Scott *v.* Lattig, 227 U. S. 229.
Illinois Cent. R. Co. *v.* Illinois, 146 U. S. 435.

Lands under or bordering navigable waters.—Subject to the paramount right of navigation, the regulation of which, in respect to foreign and domestic commerce, has been granted to the United States, each State owns the beds of all tidewaters within its jurisdiction, unless they have been granted away; and in like manner, the tidewaters themselves and the fish in them, so far as they are capable of ownership while running, and for this purpose represents the people, and the ownership is that of the people in their united sovereignty.

McCready *v.* Virginia, 94 U. S. 391.

The common-law doctrine as to the dominion, sovereignty, and ownership of lands under tidewaters on the borders of the sea applies equally to the lands beneath the navigable waters of the Great Lakes; and in this country such dominion, sovereignty, and ownership belong to the States, respectively, within whose borders such lands are situated, subject always to the right of Congress to control the navigation so far as may be necessary for the regulation of interstate and foreign commerce.

Illinois Cent. R. Co. *v.* Illinois, 146 U. S. 387.

The title and rights of riparian or littoral proprietors in the soil below high-water mark are governed by the laws of the several States, subject to the rights granted to the United States by the Constitution, and new States have the same rights as the original ones.

Shively *v.* Bowlby, 152 U. S. 1.
See also—
Withers *v.* Buckley, 20 How. 84.
Morris *v.* U. S., 174 U. S. 196.
U. S. *v.* Rio Grande, etc., Co. 174 U. S. 690.
Hudson, etc., Co. *v.* McCarter, 209 U. S. 349.
The *Abby Dodge*, 223 U. S. 166.
Scott *v.* Lattig, 227 U. S. 229.
Donnelly *v.* U. S., 228 U. S. 243.

Power to make improvements and to exact tolls.—Acts which do not necessarily interfere with the operation of legislation by Congress for the improvement of a navigable stream will not be interfered with by the courts. The improvement of harbors, bays, and navigable rivers within the States falls within the class of cases of a local nature or operation in which the States may adopt regulations in the absence of congressional action.

Mobile County *v.* Kimball, 102 U. S. 699.
Sands *v.* Manistee River Imp. Co., 123 U. S. 295.
Monongahela Nav. Co. *v.* U. S., 148 U. S. 312.

A State has the right, in the absence of congressional regulation, to establish, manage, and carry on works and improvements of a local character, though necessarily more or less affecting interstate and foreign commerce.

Ouachita Packet Co. *v.* Aiken, 121 U. S. 447.
See also—
Veazie *v.* Moor, 14 How. 571.
The Fox and Wisconsin River Case, Green Bay, etc., Canal Co. *v.* Patten, 172 U. S. 58.
Huse *v.* Glover, 119 U. S. 548.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 214.
Lindsay, etc., Co. *v.* Mullen, 176 U. S. 148.

Nothing in congressional legislation creating the Mississippi River Commission justifies the conclusion that Congress assumed the control of the entire work of protection from overflow by levees, to the displacement of local authorities.

Jackson *v.* U. S., 230 U. S. 1.

Grant of exclusive navigation.—Statutes granting to certain persons the exclusive navigation of all the waters within the jurisdiction of the State with boats moved by fire or steam for a term of years are repugnant to the commerce clause so far as those statutes prohibit vessels licensed according to acts of Congress for carrying on the coasting trade from navigating the said waters by means of fire or steam.

Gibbons *v.* Ogden, 9 Wheat. 1.

A statute of Maine granting the exclusive navigation of the upper part of the river Penobscot (said river being wholly within the State and not navigable for the last 8 miles of its course) for a certain time, on condition that the grantees would improve the navigation of the said upper part, is not unconstitutional.

Veazie *v.* Moor, 14 How. 568.

Power to obstruct navigable waters.—Waters navigable in themselves in a State and connecting with other navigable waters so as to form a waterway to other States or foreign nations can not be obstructed or impeded so as to impair, defeat, or place any burden upon a right to their navigation granted by Congress.

Harman *v.* Chicago, 147 U. S. 411.

If Congress has not legislated on the subject of obstructions to navigation, the States may act.

Pound *v.* Turck, 95 U. S. 459.
Egan *v.* Hart, 165 U. S. 188.

Power to prohibit obstructions.—Congress has power to pass laws for the regulation of the navigation of public rivers and to prevent any and all obstructions therein, but until it does pass some such law there is no common law of the United States which prohibits obstructions and nuisances in navigable rivers unless it be by the maritime law, administered by the courts of admiralty and maritime jurisdiction; and in the absence of the exercise of such power by Congress the States may adopt regulations.

Willamette Iron Bridge Co. *v.* Hatch, 125 U. S. 8.

Liability for marine torts.—Until Congress makes some regulation touching the liability of parties for marine torts resulting in the death of the persons injured, a State statute providing "that when the death of one is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had he lived, against the latter for an injury for the same act or omission," applies, and, as thus applied, it constitutes no encroachment upon the commercial power of Congress.

Sherlock *v.* Alling, 93 U. S. 104.
The *Hamilton*, 207 U. S. 398.

Rules of navigation as to displaying lights.—In Steamboat "New York" *v.* Rea (18 How. 225), the court said that a statute requiring a light to be suspended in the rigging at least 20 feet above deck as a rule of navigation—

is doubtless binding upon the State courts, but can not regulate the decisions of the Federal courts administering the general admiralty law. They can be governed only by the principles peculiar to that system, as generally recognized in maritime countries, modified by acts of Congress independently of local legislation.

Harbor regulations.—Statute enacting that the master and warden of a port within the State should be entitled to demand and receive, in addition to other fees, the sum of $5 whether called on to perform any service or not, for every vessel arriving in that port is void as a prohibition on commerce.

Steamship Co. *v.* Portwardens, 6 Wall. 31.
Gloucester Ferry Co., *v.* Penusylvania, 114 U. S. 214.
Cushing *v.* The *John Fraser*, 21 How. 187.

A State may, by its legislature, or through a board of harbor commissioners, establish, for the protection and benefit of commerce and navigation, harbor lines in navigable waters not

inconsistent with any legislation of Congress limiting the building of wharves and other structures.

Prosser *v.* Northern Pac. R. Co., 152 U. S. 64.
Gring *v.* Ives, 222 U. S. 365.
Philadelphia Co. *v.* Stimson, 223 U. S. 605.

Surveys and repairs of vessels.—Statute making it the duty of the masters and wardens of a port within a State to offer their services to make a survey of the hatches of all seagoing vessels which should arrive at that port is void as a regulation of commerce.

Foster *v.* New Orleans, 94 U. S. 246.

Fisheries.—The commerce clause does not prohibit a State from regulating fisheries in the navigable waters within its territory where such regulation makes no discrimination in favor of its own citizens and against those of other States, and where there is no Federal statute or treaty on the subject.

Manchester *v.* Massachusetts, 139 U. S. 240.

Ferries.—The power of the State to regulate matters of internal police includes the establishment of ferries as well as the construction of roads and bridges.

Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 215.

The right to establish and regulate ferries is part of that mass of legislation which embraces everything within the territory of a State not surrendered to the General Government.

Conway *v.* Taylor, 1 Black 634.
Wiggins Ferry Co. *v.* East St. Louis, 107 U. S. 365.
Sault Ste. Marie *v.* International Transit Co., 234 U. S. 333.

Conceding, *arguendo*, that the police power of a State extends to the establishment, regulation, and licensing of ferries on a navigable stream being the boundary between two States, none of the cases justifies the proposition that such power embraces transportation by water across such a river which does not constitute a ferry in a strict technical sense.

St. Clair County *v.* Interstate Transfer Co., 192 U. S. 466.

In the case of a ferry between two States, not operated in connection with railroads and not part of continuous transportation, each State has the power to regulate the ferriage charges from its own shore.

Port Richmond Ferry *v.* Hudson County, 234 U. S. 317.

When Congress legislates with respect to interstate ferries, State legislation is superseded and the inclusion of interstate railroad ferries in the act to regulate commerce prevents the operation of an ordinance regulating fares on such ferries even as applicable to persons other than railroad passengers.

New York Cent. R. Co. *v.* Hudson County, 227 U. S. 248.

Wharves, piers, and docks.—A State has authority to construct piers, etc., on navigable rivers within the State in the absence of controlling legislation by Congress.

Pound, *v.* Turck, 95 U. S. 464.
Transportation Co. *v.* Parkersburg, 107 U. S. 691.
Cushing *v.* The *John Fraser*, 21 How. 184.

Ordinance regulating the use of wharves in a town and forbidding the landing of vessels, except by permission of a wharfmaster at any point within the town other than between certain designated streets, if it be a regulation of commerce is one which belongs to that class of rules which like pilotage can be most wisely exercised by local authority and is valid until Congress assumes to establish regulations.

Packet Co. *v.* Catlettsburg, 105 U. S. 559.

In the absence of congressional legislation, wharfage is governed by the local State law. By the State law it is generally required to be reasonable, and by that law its reasonableness must be judged. The appropriation of the wharfage receipts to the objects of keeping wharves in repair, of gradually expending them as additions may be needed, and of maintaining a police for their protection and lights for their better enjoyment, is entirely germane to the purposes of wharfage facilities.

Ouachita Packet Co. *v.* Aiken, 121 U. S. 448.
Packet Co. *v.* St. Louis, 100 U. S. 427.

A municipal corporation having by the law of its organization an exclusive right to construct wharves, collect wharfage, and regulate wharfage rates, can not consistently with the Constitution charge and collect wharfage proportionate to the tonnage of the vessel from the owners of enrolled and licensed steamboats mooring and landing at the wharves constructed on the banks of a navigable river.

Packet Co. *v.* Keokuk, 95 U. S. 80.

Bridges.—*Authority to erect.*—Bridges over navigable streams which are entirely within the limits of a State are of the class of subjects on which the power of the State may be exercised as local in their nature and operation. The local authority can better appreciate their necessity, and can better direct the manner in which they shall be used and regulated than a government at a distance.

Escanaba Co. *v.* Chicago, 107 U. S. 687.
Cardwell *v.* Bridge Company, 113 U. S. 205.

Power to order removal.—Ordering the raising of railroad bridges to specified heights and the removal of other bridges over navigable waters and across which interstate commerce passes is a direct interference with such commerce.

Kansas City Sou. R. Co. *v.* Kaw Valley, 233 U. S. 75.

Regulation of tolls.—A State has not the power to regulate tolls upon a bridge connecting it with another State.

Covington, etc., Bridge Co. *v.* Kentucky, 154 U. S. 204.
See also—
Pennsylvania *v.* Wheeling Bridge Co., 13 How. 565; 18 How. 421.
Clinton Bridge, 10 Wall. 454.
Liverpool Ins. Co. *v.* Massachusetts, 10 Wall. 566.
Luxton *v.* North River Bridge Co., 153 U. S. 525.
Texas, etc., R. Co. *v.* Interstate Transp. Co., 155 U. S. 585.
Monongahela Bridge Co. *v.* U. S., 216 U S. 177.
Union Bridge Co. *v.* U. S., 204 U. S. 364.
Willamette Iron Bridge Co. *v.* Hatch, 125 U. S. 1.
Atlee *v.* Packet Co., 21 Wall. 395.
Lake Shore, etc., R. Co. *v.* Ohio, 165 U. S. 365.
New Orleans, etc., R. Co. *v.* Mississippi, 112 U. S. 12.

International bridge.—International character does not of itself divest State of power over its part of structure in silence of Congress.

International Bridge Co. *v.* New York, 254 U. S. 126.

Pilots and pilotage.—The regulation of pilots and pilotage is not a subject which is national in its nature, admitting only of one uniform system or plan of regulation, and the States may act in the absence of congressional legislation.

Cooley *v.* Philadelphia, 12 How. 319.
Anderson *v.* Pacific Coast S. S. Co., 225 U. S. 187.
Wilson *v.* McNamee, 102 U. S. 572.
Ex parte McNiel, 13 Wall. 242.
Gibbons *v.* Ogden, 9 Wheat. 1.
Olsen *v.* Smith, 195 U. S. 341.
Steamship Company *v.* Joliffe, 2 Wall. 459.
Steamship Company *v.* Portwardens, 6 Wall. 34.
Thompson *v.* Darden, 198 U. S. 315.
Spraigue *v.* Thompson, 118 U. S. 93.

Dams and booms.—Statute authorizing the erection of dams and booms held valid.

Pound *v.* Turck, 95 U. S. 460.
Willson *v.* Black Bird Creek Marsh Co., 2 Pet. 250.
Lindsay, etc., Co. *v.* Mullen, 176 U. S. 145.

As to controlling authority of acts of Congress prohibiting obstructions to navigable streams, see—

North Shore Boom Co. *v.* Nicomen Boom Co., 212 U. S. 466.

Canals.—A license taken out under an act of Congress to prosecute the coasting trade conveys no privilege to use, free of tolls or of any conditions whatsoever, the canals constructed by a State and made practicable for navigation by the funds of the State.

Veazie *v.* Moor, 14 How. 567.

Riparian water rights.—Statute declaring that "it shall be unlawful for any person or corporation to transport or carry, through pipes, conduits, ditches, or canals, the waters of any

fresh-water lake, pond, brook, creek, river, or stream of this State into any other State for use therein" does not impair any right of such owner to use such waters in interstate commerce as to one who has entered into a contract to carry such water into another State, as a person can not acquire a right to property by his desire to use it in interstate commerce.

Hudson Water Co. *v.* McCarter, 209 U. S. 349.

Warehouses and elevators.—A general State statute regulating the business and charges of public warehousemen engaged in elevating and storing grain for profit does not amount to a regulation of commerce.

Brass *v.* Stoeser, 153 U. S. 405.
See also—
Munn *v.* Illinois, 94 U. S. 135.
Budd *v.* New York, 143 U. S. 517.
Merchants' Exch. *v.* Missouri, 248 U. S. 365.

Stockyards.—State laws attempting to regulate the interstate and local business of stockyards companies, sustained in Cotting *v.* Kansas City Stock Yards Co. (82 Fed. 844, 79 Fed. 679), held invalid on the ground that the statutes denied to the company the equal protection guaranteed by the fourteenth amendment.

Cotting *v.* Kansas City Stock Yards Co., 183 U. S. 110

Banks and banking.—Statute which forbids individuals or partnerships engaged in the banking business without a license from the comptroller, is not, as to one whose business chiefly consists in receiving deposits in small sums from time to time until they reach an amount sufficient to be sent to other States and mainly to foreign countries, invalid as a regulation of interstate and foreign commerce.

Engel *v.* O'Malley, 219 U. S. 128.

As to State law escheating unclaimed deposits as applied to a national bank, see First Natl. Bank *v.* California, 262 U. S. 366.

Automobiles.—Statute prescribing a comprehensive scheme for licensing and regulating motor vehicles is not, as to vehicles coming into the State, invalid as a regulation of interstate commerce.

Hendrick *v.* Maryland, 235 U. S. 610.
Kane *v.* New Jersey, 242 U. S. 160.

Manufacture, sale, and delivery of goods.—The legislature of a State has the power in many cases to determine as a matter of State policy whether to permit the manufacture and sale of articles within the State or entirely to forbid such manufacture and sale, so long as the legislation is confined to the manufacture and sale within the State. Those are questions of public policy which belong to the legislative department to determine, but the legislative policy does not extend so far as to embrace the right

to prohibit absolutely the introduction within the State of an article not injurious, properly and honestly manufactured.

Schollenberger *v.* Pennsylvania, 171 U. S. 15.
Mugler *v.* Kansas, 123 U. S. 674.
Williams *v.* Walsh, 222 U. S. 415.

Statute making it a criminal offense to keep any office, store, or other place wherein is permitted the buying and selling of commodities for future delivery, on margin or otherwise, is not invalid as a regulation of interstate commerce.

Brodnax *v.* Missouri, 219 U. S. 285.

Congress did not, by the passage of the food and drugs act, prohibit the enactment of State laws relating to sales of foodstuffs in original packages.

Savage *v.* Jones, 225 U. S. 501.
Standard Stock Food Co. *v.* Wright, 225 U. S. 540.
McDermott *v.* Wisconsin, 228 U. S. 115.
Plumley *v.* Massachusetts, 155 U. S. 461.

A State can not discriminate against a foreign citizen by reason of his being engaged in selling the products of other States.

Guy *v.* Baltimore, 100 U. S. 434.
Pittsburg, etc., Coal Co. *v.* Louisiana, 156 U. S. 590.
May & Co. *v.* New Orleans, 178 U. S. 496.

Where foreign corporation manufacturing signaling devices contracted to equip railroad in another State, and for that purpose engaged labor and proceeded to install signal apparatus along the line, such corporation was doing intrastate business.

General Railway Signal Co. *v.* Virginia, 246 U. S. 500.
Cheney Bros. Co. *v.* Massachusetts, 246 U. S. 147.

Intoxicating liquors.—This subject, of course, is now governed by the eighteenth amendment and legislation thereunder, but the following cases are cited to show what the laws and regulations were prior to the incorporation of the amendment into the Constitution.[1]

Vance *v.* Vandercook, 170 U. S. 438.
Bartemeyer *v.* Iowa, 18 Wall. 129.
Tiernan *v.* Rinker, 102 U. S. 123.
Foster *v.* Kansas, 112 U. S. 201.
Walling *v.* Michigan, 116 U. S. 446.
Bowman *v.* Chicago, etc., R. Co., 125 U. S. 465.
Kidd *v.* Pearson, 128 U. S. 1.
Leisy *v.* Hardin, 135 U. S. 100.
Lyng *v.* Michigan, 135 U. S. 161.
In re Rahrer, 140 U. S. 563.
Scott *v.* Donald, 165 U. S. 58.
American Exp. Co. *v.* Iowa, 196 U. S. 133.
Adams Exp. Co. *v.* Iowa, 196 U. S. 147.
Foppiano *v.* Speed, 199 U. S. 501.
Delamater *v.* South Dakota, 205 U. S. 93.
Adams Exp. Co. *v.* Kentucky, 206 U. S. 129.
Murray *v.* Wilson, 213 U. S. 151.

[1] See same subject, pp. 605, 685, 734, and 747.

Purity Extract Co. *v.* Lynch, 226 U. S. 192.
Heyman *v.* Hays, 236 U. S. 178.
Adams Exp. Co. *v.* Kentucky, 238 U. S. 190.

Cigarettes.—Statute making it a misdemeanor for any person, firm, or corporation to bring cigarettes into the State, for the purpose of selling same, is not an infringement upon the exclusive power of Congress to regulate interstate commerce, when it operates only on sales not by the owner in the original packages.

Austin *v.* Tennessee, 179 U. S. 343.

See also Sawrie *v.* Tennessee (82 Fed. 615), in which the Tennessee law was declared invalid; and Iowa *v.* McGregor (76 Fed. 956), in which the Iowa law was declared invalid.

Food and drugs.—*Regulating net weight of retail packages.*—Statute providing that lard compound or lard substitute, unless sold in bulk, shall be put up in pails or other containers holding 1, 3, or 5 pounds net weight, or some multiple of these numbers, does not violate the commerce clause as to sales by retail. Nor is the statute repugnant to the pure food and drugs act of Congress.

Armour *v.* North Dakota, 240 U. S. 510.

Requiring State brand only.—Statute relating to the sale of certain commodities which provides that they shall bear the label required by the State law and none other is in conflict with the act of Congress of June 30, 1906, under which such articles which have moved in interstate commerce shall be and remain branded under the Federal regulations until they reach the consumers.

McDermott *v.* Wisconsin, 228 U. S. 115.

Misbranding of food products.—Statute making unlawful shipment of food products misbranded by reason of misleading label, or sale under name of another article, held a legitimate exercise of the power to regulate commerce.

Weeks *v.* U. S., 245 U. S. 618.

Oleomargarine.—State law condemned:

Schollenberger *v.* Pennsylvania, 171 U. S. 15.
Plumley *v.* Massachusetts, 155 U. S. 467.
Collins *v.* New Hampshire, 171 U. S. 33.
Capital City Dairy Co. *v.* Ohio, 183 U. S. 245.

Coffee.—Statute prohibiting the manufacture or sale of any adulterated food or drug, or the coloring or coating of food whereby it is made to appear better than it really is, is not repugnant to the commerce clause, but is an exertion by the State of its reserved police power to legislate for the protection of the health and safety of the community and to provide against deception and fraud.

Crossman *v.* Lurman, 192 U. S. 196.
Arbuckle *v.* Blackburn, 113 Fed. 616; 191 U. S. 405.

Citrus fruits.—Statute which makes it unlawful for any one to sell, offer for sale, ship, or deliver for shipment any citrus fruits which are immature or otherwise unfit for consumption is valid.

Sligh *v.* Kirkwood, 237 U. S. 52.

Meat.—Virginia law regulating the sale of meat held unconstitutional as a regulation in restraint of interstate commerce.

Brimmer *v.* Rebman, 138 U. S. 78.

See also Seven Cases *v.* U. S. (239 U. S. 510), where it was held that Congress had power to amend the food and drugs act so as to declare misbranded drugs which bear labels containing false statements as to curative powers.

Game laws.—A State has power to make it an offense to have in possession, for the purpose of transportation beyond the State, birds which have been lawfully killed within the State during the open season.

Geer *v.* Connecticut, 161 U. S. 519.

Statute making it unlawful to have possession of imported game during the closed season, except upon giving bond against its sale, is a proper exercise of the police power.

Silz *v.* Hesterberg, 211 U. S. 31.

By right of ownership and in the exercise of police power, a State may regulate the taking of wild animals within its borders, their subsequent use, and the property rights that may be acquired in them.

Lacoste *v.* Dept. of Conservation, 263 U. S. 545.

Fish laws.—Statute for the protection of fisheries in water within the territorial jurisdiction of the State is valid.

Manchester *v.* Massachusetts, 139 U. S. 240.

Statute to promote the growth of oysters in the waters of the State held valid.

Smith *v.* Maryland, 18 How. 71.
Lee *v.* New Jersey, 207 U. S. 67.
McCready *v.* Virginia, 94 U. S. 391.

Excluding certain classes of persons from State.—Statute inhibiting a certain class of persons from entering the State would be invalid under the commerce clause.

See Arkansas *v.* Kansas, etc., Coal Co. (96 Fed. 353), holding that no statute of the State inhibited persons described as "armed men of the low and lawless type of humanity" coming into the State. "It will be time enough to decide whether the State has the power to prohibit them coming when a proper case, based on such a statute, is brought to the attention of the court. It is enough now to say that under the fourteenth amendment and under the commerce clause of the Constitution they now have that right." *Reversed* and remanded to the State court in 183 U. S. 185.

The police power of a State justifies the adoption of the precautionary measures against social evils. Under it a State

may legislate to prevent the spread of crime, or pauperism, or disturbance of the peace. It may exclude from its limits convicts, paupers, idiots, and lunatics and persons likely to become a public charge, as well as persons afflicted by contagious or infectious diseases.

Railroad Co. *v.* Husen, 95 U. S. 471.
See also—
New York *v.* Miln, 11 Pet. 142.
Henderson *v.* New York, 92 U. S. 259.
Chy Lung *v.* Freeman, 92 U. S. 277.

Forms of commercial contracts.—The States may prescribe the forms of all commercial contracts, as well as the terms and conditions upon which the internal trade of the State may be carried on.

Covington, etc., Brdg. Co. *v.* Kentucky, 154 U. S. 204.

While any restriction as to the evidence of a contract relating to interstate commerce may be said to be a limitation on the contract itself, yet this remote effect, resulting from the lawful exercise by a State of its power to determine the form in which contracts may be proved, does not amount to a regulation of interstate commerce.

Richmond, etc., R. Co. *v.* Patterson, 169 U. S. 311.

So-called "blue sky" law.—Statute which requires dealers in securities evidencing title to or interest in property to obtain a license from a State officer is not invalid as applied to disposition within the State of securities transported from other States.

Merrick v. Halsey, 242 U. S. 568.
Hall *v.* Geiger-Jones Co., 242 U. S. 539.
Caldwell *v.* Sioux Falls, etc., Co., 242 U. S. 559.
Contra—
Geiger-Jones Co. *v.* Turner, 230 Fed. 233.
Bracey *v.* Darst, 218 Fed. 482.
Alabama, etc., Transp. Co. *v.* Doyle, 210 Fed. 173.

Censorship of motion-picture films.—Statute creating a board of censors of motion-picture films and making it the duty of the board to examine and censor films to be publicly exhibited in the State, including those brought from other States.

Mutual Film Corp. *v.* Ohio, 236 U. S. 230.

Statute of limitations.—Section 16 of the act to regulate commerce, as amended June 29, 1906, that all complaints for the recovery of damages shall be filed with the commission within two years from the accrual of the cause of action, supersedes State statutes of limitations otherwise applicable to such cases.

Meeker *v.* Lehigh Valley R. Co., 236 U. S. 412.

Slavery.[1]—The power over slavery was considered by a majority of the court to belong to the States, though the point was not necessary to a decision of the case. The subject was local in its character and in its effect, and the transfer and sale of slaves

[1] See same subject, pp. 649 and 742.

interstate could not be separated from this power. The court said:

> Each State has a right to protect itself against the avarice and intrusion of the slave dealer; to guard its citizens against the inconveniences and dangers of a slave population. The right to exercise this power by a State is higher and deeper than the Constitution. The evil involves the prosperity and may endanger the existence of a State. Its power to guard against or to remedy the evil rests upon the law of self-preservation—a law vital to every community and especially to a sovereign State.

Groves *v.* Slaughter, 15 Pet. 508.

Foreign corporations.[1]—*Right of States to exclude.*—The State may exclude the foreign corporation entirely; it may restrict its business to particular localities, or it may exact such security for the performance of its contracts with its citizens as in its judgment will best promote the public interest. The whole matter rests in the discretion of the State.

Paul *v.* Virginia, 8 Wall. 181.

See also—

Security, etc., Co. *v.* Prewitt, 202 U. S. 246.
New York *v.* Roberts, 171 U. S. 658.
Ashley *v.* Ryan, 153 U. S. 436.
Maine *v.* Grand Trunk R. Co., 142 U. S. 217.
Home Ins. Co. *v.* New York, 134 U. S. 594.
California *v.* Central Pac. R. Co., 127 U. S. 1.
Philadelphia, etc., S. S. Co. *v.* Pennsylvania, 122 U. S. 326.
Cooper Mfg. Co. *v.* Ferguson, 113 U. S. 727.
State Railroad Tax Cases, 92 U. S. 575.
Delaware Railroad Tax, 18 Wall. 206.
Railroad Company *v.* Peniston, 18 Wall. 5.
State Tax on Railway Gross Receipts, 15 Wall. 284.
Bank of Augusta *v.* Earle, 13 Pet. 519.
Ducat *v.* Chicago, 10 Wall. 410.
Hamilton Co. *v.* Massachusetts, 6 Wall. 632.
Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 28.
Standard Oil Co. *v.* Tennessee, 217 U. S. 413.

Exception as to corporations engaged in interstate and foreign commerce.—Whilst there are exceptions to this rule, they embrace only cases where a corporation created by one State rests its right to enter another and to engage in business therein upon the Federal nature of its business; as, for instance, where it has derived its being from an act of Congress and has become a lawful agency for the performance of governmental or *quasi* governmental functions, or where it is necessarily an instrumentality of interstate commerce, or its business constitutes such commerce, and is therefore solely within the paramount authority of Congress. In these cases the exceptional business is protected against interference by State authority.

Hooper *v.* California, 155 U. S. 652.

See also—

Pembina, etc., Co. *v.* Pennsylvania, 125 U. S. 186.
Doyle *v.* Continental Ins. Co., 94 U. S. 535.
Ducat *v.* Chicago, 10 Wall. 410.
Lafayette Ins. Co. *v.* French, 18 How. 404.
Fritts *v.* Palmer, 132 U. S. 288.

[1] See same subject, pp. 294 and 339.

Excise tax on foreign corporation.—Imposition of a State excise tax as a condition of admitting a foreign manufacturing corporation engaged in both local and interstate commerce to do business within the State, based upon the amount of its authorized capital stock, without limitation of the amount of the tax, constitutes an unlawful burden on interstate commerce.

International Paper Co. *v.* Massachusetts, 246 U. S. 135.
Locomobile Co. *v.* Massachusetts, 246 U. S. 146.

The imposition of a State tax as a condition of admitting a foreign corporation engaged in interstate commerce to do business within the State, based upon the amount of its authorized capital stock, and of a franchise tax based upon capital, surplus, and undivided profits, constitutes an unlawful burden on interstate commerce.

Looney *v.* Crane, 245 U. S. 178.

It is often difficult to draw the line between the power of the State and the prohibitions of the Constitution. Whilst it is commonly said that the State has absolute control over the corporations of its own creation, and may impose upon them such conditions as it pleases, and like control over its own territory, highways, and bridges, and may impose such exactions for thier use as it sees fit, on the other hand it is conceded that it can not regulate or impede interstate commerce nor discriminate between its own citizens and those of the other States prejudicially to the latter.

Railroad Company *v.* Maryland, 21 Wall. 472.

Requiring foreign corporations to file statements.—Statute requiring foreign corporation engaged in interstate commerce to file certificate or statement with State officer held unconstitutional.

Buck Stove, etc., Co. *v.* Vickers, 226 U. S. 205.
International Text-Book Co. *v.* Lynch, 218 U. S. 664.
International Text-Book Co. *v.* Pigg, 217 U. S. 91.
Diamond Glue Co. *v.* U. S. Glue Co., 187 U. S. 611.
Crutcher *v.* Kentucky, 141 U. S. 47.
Cooper Mfg. Co. *v.* Ferguson, 113 U. S. 727.
Northern Securities Co. *v.* U. S., 193 U. S. 197.

Service of process upon agents within the State of a foreign corporation doing interstate business does not burden such commerce.

International Harvester Co. *v.* Kentucky, 234 U. S. 579.

Transaction of domestic business.—A State may restrict the right of a foreign corporation to engage in business within its limits or to sue in its courts so long as interstate commerce be not thereby burdened.

Interstate Amusement Co. *v.* Albert, 239 U. S. 560.

Imposing condition on right to sue in State court.—Statute which provides that no action shall be commenced or maintained in any of the courts of the State by a foreign corporation on any contract, agreement, or transaction made or entered into in the

State by such corporation unless it shall have appointed a resident agent upon whom process may be served in any action to which it may be a party, is invalid as to the right of a foreign corporation to sue in the State courts on a cause of action arising out of an interstate transaction.

Sioux Remedy Co. *v.* Cope, 235 U. S. 197.

A provision in a contract of sale of an artificial-ice plant by which the foreign corporate seller agreed to furnish an engineer who should assemble and erect the machinery at the point of destination, and should make a practical efficiency test before complete delivery, is relevant and appropriate to the interstate sale of the machinery, and therefore does not justify the courts of the State to which the machinery was shipped in refusing to enforce payment of the purchase price on the theory that the corporation was doing local business in the State without having first secured the permit made by a State statute a condition precedent to the right to sue in the local courts.

York Mfg. Co. *v.* Colley, 247 U. S. 21.

Consolidation under State laws.—A State in permitting a foreign corporation to become one of the constituent elements of a consolidated corporation organized under its laws may impose such conditions as it deems proper, and the charge of a fee, based on the percentage of the entire capital stock, does not constitute a tax upon interstate commerce or the right to carry on the same or the instruments thereof.

Ashley *v.* Ryan, 153 U. S. 443.

See also People's Tobacco Co. *v.* American Tobacco Co. (246 U. S. 79) as to dissolution decree against corporation.

State taxation [1]—*In general.*—It is thoroughly well settled that State laws may not burden interstate commerce, and as one form of burden may exist in taxing the conduct of interstate commerce, such taxation is condemned. The right of a State to impose a tax is not necessarily inconsistent with the right of Congress to regulate.

U. S. Exp. Co. *v.* Minnesota, 223 U. S. 335.
Baltic Mining Co. *v.* Massachusetts, 231 U. S. 68.
Kansas City, etc., R. Co. *v.* Kansas, 240 U. S. 227.
Richmond, etc., R. Co. *v.* Patterson, 169 U. S. 311.
Binderup *v.* Pathe Exchange, 263 U. S. 291.

Statute which requires transportation companies doing business within the State to pay a tax upon all merchandise carried by them, estimated by the weight of the merchandise, can not be enforced upon merchandise in course of interstate transportation.

Case of State Freight Tax, 15 Wall. 232.
See also—
Osborne *v.* Mobile, 16 Wall. 479.
Railroad Company *v.* Peniston, 18 Wall. 5.
May *v.* New Orleans, 178 U. S. 496.

[1] See same subject, pp. 74, 315, 362, 366, 600, 636, 728, and 745.

Kelley *v.* Rhoads, 188 U. S. 1.
Darnell *v.* Memphis, 208 U. S. 113.
Bacon *v.* Illinois, 227 U. S. 504.

The exemption of interstate and foreign commerce from State regulation does not prevent a State from taxing the property of those engaged in such commerce located within the State as the property of other citizens is taxed.

Leloup *v.* Mobile, 127 U. S. 640.

Southern Ry. *v.* Watts, 260 U. S. 519.

The products of a State are liable to be taxed like other property within the State, though intended for exportation to another State and partially prepared for that purpose by being deposited at a place or port of shipment within the State, such products being owned by a person residing in another State.

Coe *v.* Errol, 116 U. S. 517.
See also—
Hinson *v.* Lott, 8 Wall. 148.
General Oil Co. *v.* Crain, 209 U. S. 211.
Thompson *v.* Kentucky, 209 U. S. 340.
Cudahy Packing Co. *v.* Minnesota, 246 U. S. 450.
Champlain Realty Co. *v.* Brattleboro, 260 U. S. 366.

Where railroad companies, complaining of systematic and intentional discrimination by a State board in the assessment of taxes, were allowed no remedy by the State law other than a writ of error from the State supreme court to correct only errors of law apparent on the face of the record prepared by the board itself, with no supersedeas pending review to prevent infliction of penalties on their agents for failure to pay the tax, held, that the remedy was not adequate and that the case was cognizable by the district court in suits for injunction.

Chicago, B. & Q. R. R. *v.* Osborne, 265 U. S. 14.

Separation of interstate from intrastate commerce.—While interstate commerce can not be regulated by a State by the laying of taxes thereon, in any form, yet whenever the subjects of taxation can be separated so that that which arises from interstate commerce can be distinguished from that which arises from commerce wholly within the State, the distinction will be acted upon by the courts, and the State permitted to collect that arising from commerce solely within its own territory.

Lehigh Valley R. Co. *v.* Pennsylvania, 145 U. S. 200.
See also—
Hanley *v.* Kansas City Southern R. Co., 187 U. S. 621.
Ratterman *v.* Western Union Tel. Co., 127 U. S. 424.
Western Union Tel. Co. *v.* Pennsylvania, 128 U. S. 39.
Pacific Exp. Co. *v.* Seibert, 142 U. S. 350.
State Freight Tax Case, 15 Wall. 232.

Discrimination against foreign products.—No State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other States more onerous public

burdens or taxes than it imposes upon the like products of its own territory.

Guy *v.* Baltimore, 100 U. S. 439.
See also—
Cook *v.* Pennsylvania, 97 U. S. 573.
Machine Co. *v.* Gage, 100 U. S. 676.
Walling *v.* Michigan, 116 U. S. 455.
Hinson *v.* Lott, 8 Wall. 148.
Welton *v.* Missouri, 91 U. S. 279.
Webber *v.* Virginia, 103 U. S. 350.
Darnell, etc., Co. *v.* Memphis, 208 U. S. 113.
Tiernen *v.* Rinker, 102 U. S. 123.
Downham *v.* Alexandria, 10 Wall. 173.
Reymann Brewing Co. *v.* Brister, 179 U. S. 445.
Cheney Bros. Co. *v.* Massachusetts, 246 U. S. 147.

State tax on sale of automobiles with reduction in amount where percentage of assets of manufacturer is invested in bonds of State discriminates against products of manufacturers of other States.

Bethlehem Motors Co. *v.* Flynt, 256 U. S. 421.

Consistently with the commerce clause a State can not tax the privilege or act of engaging in interstate commerce, but may tax the company's property within the State although chiefly employed in such commerce.

Wells Fargo & Co. *v.* Nevada, 248 U. S. 165.

Taxation of exports.—State tax imposed upon the business of selling goods in foreign commerce, the amount of which is measured by the gross receipts, is unconstitutional.

Crew Levick Co. *v.* Pennsylvania, 245 U. S. 292.

Taxation of imports.—As regards immunity from State taxation, the distinction between imports and articles in original packages in interstate commerce is that, in the one case, the immunity attaches to the import itself before sale, while in the other it depends on whether the tax regulates or burdens interstate commerce.

Sonneborn Bros. v. Cureton, 262 U. S. 506.

Transportation, telegraph, and telephone companies.—State statutes imposing a tax upon passengers, either foreigners or citizens, coming into the ports of the State, either in foreign vessels or vessels of the United States, from foreign nations or from ports in the United States, are unconstitutional and void, being in their nature regulations of commerce contrary to the grant in the Constitution to Congress of the power to regulate interstate and foreign commerce.

Passenger Cases, 7 How. 412.
Henderson *v.* New York, 92 U. S. 259.

Tax on instrumentalities of commerce as property—(a) In general.—The immunity of a party, individual, or corporation from being compelled by a State to pay for the privilege of engaging in interstate commerce does not prevent a State from

imposing ordinary property taxes upon property having a *situs* within its territory and employed in interstate commerce.

U. S. Exp. Co. *v.* Minnesota, 223 U. S. 335.
Atlantic, etc., Tel. Co. *v.* Philadelphia, 190 U. S. 160.

The mere fact that a corporation is engaged in interstate commerce does not exempt its property from State taxation.

Baltic Mining Co. *v.* Massachusetts, 231 U. S. 68.

Although the transportation of the subjects of interstate commerce, or the receipts therefrom, or the occupation or business of carrying it on, can not be directly subjected to State taxation, yet property belonging to corporations or companies engaged in such commerce may be; and whatever the particular form of the exaction, if it is essentially only property taxation, it will not be considered as falling within the inhibition of the Constitution.

Adams Exp. Co. *v.* Ohio, 165 U. S. 220.
See also—
Adams Exp. Co. *v.* Kentucky, 166 U. S. 171.
Pullman Co. *v.* Pennsylvania, 141 U. S. 23.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 196.
Adams Exp. Co. *v.* Ohio, 166 U. S. 218.
Leloup *v.* Mobile, 127 U. S. 648.
Western Union Tel. Co. *v.* Taggart, 163 U. S. 1.

(*b*) *Rolling stock.*—A State has rightful power to levy and collect a tax upon rolling stock and other movable personal property used and found within its territorial limits, if and whenever it may choose, by apt legislation, to exert its authority over the subject.

Marye *v.* Baltimore, etc., R. Co., 127 U. S. 123.
See also—
American Refrigerator Transit Co. *v.* Hall, 174 U. S. 70.
Union Refrigerator Transit Co. *v.* Lynch, 177 U. S. 149.
Cudahy Packing Co. *v.* Minnesota, 246 U. S. 450.

The rolling stock of a railroad, and traffic balances owing it, are not exempt from attachment or garnishment merely because the former are used, and the latter derived, in interstate commerce.

Atchison Ry. Co. *v.* Wells, 265 U. S. 101.

(*c*) *Vessels.*—A vessel owned by and employed in the service of a resident of a particular State is primarily and presumptively taxable under the authority of that State, and of that State only. Her *status* is not affected by what has been done or neglected in regard to her registry and enrollment under acts of Congress.

Morgan *v.* Parham, 16 Wall. 471.
See also—
Wiggins Ferry Co. *v.* East St. Louis, 107 U. S. 365.
St. Louis *v.* Wiggins Ferry Co., 11 Wall. 423.
Hays *v.* Pacific Mail S. S. Co., 17 How. 596.

Vessels registered or enrolled are not exempt from the ordinary rules respecting taxation of personal property.

Old Dominion S. S. Co. *v.* Virginia, 198 U. S. 307.
See also—
Transportation Co. *v.* Wheeling, 99 U. S. 285.
Moran *v.* New Orleans, 112 U. S. 74.
Smith *v.* Maryland, 18 How. 71.
Sinnot *v.* Davenport, 22 How. 227.
Foster *v.* New Orleans, 94 U. S. 246.
I. C. C. *v.* Goodrich Transit Co., 224 U. S. 194.

A State may create liens for materials and supplies furnished a vessel in her home port where not amounting to a regulation of commerce, and may enact reasonable regulations for their enforcement.

The *Belfast*, 7 Wall. 645.
See also—
Norton *v.* Switzer, 93 U. S. 355.
Veazie *v.* Moor, 14 How. 574.
Edwards *v.* Elliott, 21 Wall. 532.
The *Winnebago*, 205 U. S. 354.
Martin *v.* West, 222 U. S. 191.

Corporate receipts, earnings, and dividends.—Tax by a State on freights carried between States differs from a tax on receipts from such transportation, the former being a tax because of the carriage, and the latter being upon the carrier's property.

In re State Tax on Railway Gross Receipts, 15 Wall. 284.
See also—
Delaware Railroad Tax, 18 Wall. 206.
Telegraph Co. *v.* Texas, 105 U. S. 460.
Western Union *v.* Pennsylvania, 128 U. S. 39.
Maine *v.* Grand Trunk R. Co., 142 U. S. 217.
Wisconsin, etc., R. Co. *v.* Powers, 191 U. S. 379.
Ohio Tax Cases, 232 U. S. 576.
Cornell Steamboat Co. *v.* Sohmer, 235 U. S. 549

The levy and assessment under State law of a general income tax upon the net income of a Wisconsin corporation derived from transactions in interstate commerce is not such a direct burden on interstate commerce as to contravene the commerce clause.

U. S. Glue Co. *v.* Oak Creek, 247 U. S. 321.
Northwestern Life Ins. Co. *v.* Wisconsin, 247 U. S. 132.
Atlantic Coast Line *v.* Daughton, 262 U. S. 413.

Gross receipts—(a) From interstate and foreign transportation.—Statute which, as interpreted by the supreme court of the State, imposes a tax upon the gross receipts of a transportation company for the transportation of freight from points without to points within the State, and *vice versa*, is invalid as a regulation of interstate commerce.

Fargo *v.* Michigan, 121 U. S. 230.
See also—
Galveston, etc., R. Co. *v.* Texas, 210 U. S. 217.
Railroad Co. *v.* Maryland, 21 Wall. 469.
Philadelphia, etc., S. S. Co. *v.* Pennsylvania, 122 U. S. 326.
Cudahy Packing Co. *v.* Minnesota, 246 U. S. 450.
Armour & Co. *v.* Virginia, 246 U. S. 1.

(*b*) *Graduated to the proportion of number of miles.*—Gross receipts of interstate transportation companies.

Maine *v.* Grand Trunk R. Co., 142 U. S. 217.
Oklahoma *v.* Wells, Fargo & Co., 223 U. S. 301.
Wisconsin, etc., R. Co. *v.* Powers, 191 U. S. 379.
Indiana *v.* Pullman Co., 16 Fed. 193.

A state constitutionally may condition the right of an express company to enter upon and transact intrastate business by requiring antecedent payment of a tax based on the number of miles of railroad tracks in the State over which the business is to be operated and varied according to a classification of the tracks made for the purposes of railroad taxation and as to which neither notice nor opportunity to be heard is vouchsafed the express company.

Southeastern Exp. Co. *v.* Robertson, 264 U. S. 535.

(*c*) *When interstate and intrastate receipts can be separated.*—A single tax assessed under a State statute upon the receipts of a telegraph company which were derived partly from interstate and partly from intrastate commerce, but which were returned and assessed in gross and without separation or apportionment is not wholly invalid, but is invalid only in proportion to the extent that such receipts were derived from interstate commerce.

Ratterman *v.* Western Union, 127 U. S. 411.
Western Union *v.* Alabama, 132 U. S. 472.

(*d*) *Tolls received for use of road.*—Statute imposing taxes on tolls paid by one company to another for the use of its railroad, where the company paying tolls is engaged in the transportation of merchandise within the State to points beyond, is not an interference with interstate commerce.

New York, etc., R. Co. *v.* Pennsylvania, 158 U. S. 431.

(*e*) *As to measure of property tax.*—A property tax, measured by the gross receipts of an express company within the State, including earnings on interstate business, which is in lieu of all taxes upon its property and which is merely a scheme of taxation seeking to reach the value of the property of such a company in the State, measured by the receipts from business done within the State, is valid.

U. S. Exp. Co. *v.* Minnesota, 223 U. S. 335.
Illinois Cent. R. Co. *v.* Greene, 244 U. S. 555.
Pullman Co. *v.* Richardson, 261 U. S. 330.

(*f*) *From internal transportation.*—Statute which imposes a tax on the receipts of an express company for business done within the State is evidently intended to exclude the idea that the tax is to be imposed upon the interstate business of the company.

Pacific Exp. Co. *v.* Seibert, 142 U. S. 350.
Ohio River, etc., R. Co. *v.* Dittey, 203 Fed. 537.
Ohio Tax Cases, 232 U. S. 576.
Lehigh Valley R. Co. *v.* Pennsylvania, 145 U. S. 201.

(*g*) *According to unit rule.*—Where an assessing board is charged with the duty of valuing a certain number of miles of railroad within a State, forming part of a line of road running into another State, and assesses those miles of road at their actual cash value determined on a mileage basis, it does not place a burden upon interstate commerce, beyond the power of the State, simply because the value of that railroad as a whole is created partly, and perhaps largely, by the interstate commerce which it is doing.

Cleveland, etc., R. Co. *v.* Backus, 154 U. S. 443.
State Railroad Tax Cases, 92 U. S. 575.
Delaware Railroad Tax, 18 Wall. 206.
Southern Ry. *v.* Watts, 260 U. S. 519.

The unit rule of valuation applies to express companies. The unit is a unit of use and management, and the horses, wagons, safes, pouches, and furniture, the contracts for transportation facilities, and the capital necessary to carry on the business, possesses a value in combination and from use in connection with the property and capital elsewhere which can rightfully be recognized in the assessment for taxation.

Adams Exp. Co. *v.* Ohio, 165 U. S. 221.
Adams Exp. Co. *v.* Kentucky, 166 U. S. 171.

(*h*) *On mileage basis.*—Statute taxing the capital stock of a sleeping-car company engaged in interstate business, by taking as a basis of assessment such proportion of the capital stock of the company as the number of miles over which it runs cars within the State bears to the whole number of miles in that and other States, is constitutional.

Pullman Co. *v.* Pennsylvania, 141 U. S. 26.
Pullman Co. *v.* Hayward, 141 U. S. 36.

Statute regarding telegraph companies, which, as construed and applied by the supreme court of the State, takes as the basis of valuation of the company's property within the State the proportion of the value of its whole capital stock which the length of its lines within the State bears to the whole length of all its lines, and makes it the duty of the State board to make such deduction, on account of a greater proportional value of the company's property outside the State, as to assess its property within the State at its true cash value only, is constitutional.

Western Union *v.* Taggart, 163 U. S. 27.
Massachusetts *v.* Western Union, 141 U. S. 44.
Western Union *v.* Massachusetts, 125 U. S. 552.
Postal Tel. Cable Co. *v.* Adams, 155 U. S. 697.

Assessment of taxes on track mileage basis held invalid where cost of construction per mile is less within than without taxing State.

Wallace *v.* Hines, 253 U. S. 66, in connection with which see Davis *v.* Wallace, 257 U. S. 478.

Including property not used in the business of the company.—The principle of organic unity may not be made the means of unlawfully taxing the privilege of property outside the State, under the name of enhanced value or good will, and a tax purporting to be based on an assessment under the unit rule, which includes property outside the State not necessarily used in the actual business of the company, is invalid.

Fargo *v.* Hart, 193 U. S. 490.

License and privilege taxes—(*a*) *In general.*—No State can compel a party, individual, or corporation to pay for the privilege of engaging in interstate commerce.

Atlantic, etc., Tel. Co. *v.* Philadelphia, 190 U. S. 160.

No State can interfere with interstate commerce through the imposition of a tax, by whatever name called, which is in effect a tax for the privilege of transacting such commerce; but this restriction does not in the least abridge the right of a State to tax at their full value all the instrumentalities used for such commerce.

Adams Exp. Co. *v.* Ohio, 166 U. S. 185.
McCall *v.* California, 136 U. S. 104.

The fact that grain stored in an elevator is to be shipped out of the State does not make a State statute requiring a license for conducting the business of such elevator in the State amount to a regulation of interstate commerce.

Cargill Co. *v.* Minnesota, 180 U. S. 452.

Statute providing that no person shall engage in certain occupations without obtaining license from the United States is not unconstitutional.

License Tax Cases, 5 Wall. 462.

Where the business or occupation consists in the sale of goods, the license tax required for its pursuit is in effect a tax upon the goods themselves. If such a tax be within the power of the State to levy, it matters not whether it be raised directly from the goods, or indirectly from them, through the license to the dealer; but if such tax conflict with any power vested in Congress by the Constitution of the United States, it will not be any the less invalid because enforced through the form of a personal license.

Welton *v.* Missouri, 91 U. S. 278.

A city can not make a charge as the price of the privilege of navigating a river in accordance with the terms of the party's license from the United States, as it violates the commerce clause.

Moran *v.* New Orleans, 112 U. S. 69.

(*b*) *Express companies.*—Statute imposing license tax on express companies doing business within the State held valid.

Osborne *v.* Florida, 164 U. S. 654.

Municipal ordinance requiring a license tax to be paid by an express company as a condition to its right to do business in the city is invalid as applied to a company doing an interstate business.

Adams Exp. Co. *v.* New York, 232 U. S. 14.

State tax purporting on its face to be for carrying on the express business within the State, the length of the line used being the measure of the tax and thereby casting the burden of the tax upon interstate business, is void.

U. S. Exp. Co. *v.* Allen, 39 Fed. 712, reversed in Shelton *v.* Platt, 139 U. S. 591.

(*c*) *Osborne* v. *Mobile* (*16 Wall. 479*) *overruled.*—In Leloup *v.* Mobile (127 U. S. 647) the court said:

The State court relies upon the case of Osborne *v.* Mobile (16 Wall. 479), which brought up for consideration an ordinance of the city requiring every express company or railroad company doing business in that city, and having a business extending beyond the limits of the State, to pay an annual license of $500; if the business was confined within the limits of the State the license fee was only $100; if confined within the city it was $50; subject in each case to a penalty for neglect or refusal to pay the charge. This court held that the ordinance was not unconstitutional. This was in December term, 1872. In view of the course of decisions which have been made since that time, it is very certain that such an ordinance would now be regarded as repugnant to the power conferred upon Congress to regulate commerce among the several States.

Statute requiring the agent of a foreign express company doing business in the State to pay a license fee, and to deposit with the auditor a statement of the company's assets and liabilities, is unconstitutional as applied to interstate commerce.

Crutcher *v.* Kentucky, 141 U. S. 47.
Adams Exp. Co. *v.* Kentucky, 166 U. S. 171.
Adams Exp. Co. *v.* Ohio, 166 U. S. 185.
Ewing *v.* Leavenworth, 226 U. S. 464.

(*d*) *Railroad companies.*—State tax on cab service maintained by railroad company held valid.

Pennsylvania R. Co. *v.* Knight, 192 U. S. 21

Stipulation in a railroad company's charter that it shall pay a bonus to the State from time to time is not invalid as a tax on the transportation of passengers or as infringing the powers of Congress.

Railroad Company *v.* Maryland, 21 Wall. 469.

Statute prescribing a different rule of taxation for railroad companies from that for individuals does not violate the Constitution.

State Railroad Tax Cases, 92 U. S. 575.

State board of equalization included in their assessment all the franchises of a railroad company, among which were franchises

conferred by the United States, of constructing a railroad across the State and other States, and of taking toll thereon. Held unconstitutional.

California *v.* Central Pac. R. Co., 127 U. S. 1.
See also—
McCall *v.* California, 136 U. S. 104.
Norfolk, etc., R. Co. *v.* Pennsylvania, 136 U. S. 114.
New York Cent., etc., R. Co. *v.* Miller, 202 U. S. 584.
Union Pac. R. Co. *v.* Missouri, 248 U. S. 67.

State law applicable to interstate and intrastate commerce, which imposes fees in excess of cost of inspection, imposes tax and is void, if not so far separable that excess may be assigned to intrastate commerce alone.

Phipps *v.* Cleveland Refg. Co., 261 U. S. 449.

(*e*) *Sleeping-car companies.*—State statute imposing a privilege on the running of sleeping cars over railroads which in terms applies strictly to business done in the transportation of passengers taken up at one point in the State and transported wholly within the State to another point therein is not an interference with interstate commerce.

Allen *v.* Pullman Co., 191 U. S. 181.
See also—
Pullman Co. *v.* Adams, 189 U. S. 420.
Pickard *v.* Pullman Co., 117 U. S. 46.
Tennessee *v.* Pullman Co., 117 U. S. 51.
Pullman Co. *v.* Kansas, 216 U. S. 56.
Pullman Co. *v.* Richardson, 261 U. S. 330.

(*f*) *Telegraph and telephone companies.*—A State or municipal corporation may impose a license tax on a telegraph company on account of business done wholly within the State.

Postal Tel. Cable Co. *v.* Charleston, 153 U. S. 694.
See also—
Williams *v.* Talladega, 226 U. S. 404.
Leloup *v.* Mobile, 127 U. S. 645.
Western Union *v.* Kansas, 216 U. S. 1.
Ludwig *v.* Western Union, 216 U. S. 146.
Postal Tel. Cable Co. *v.* Adams, 155 U. S. 696.
Telegraph Co. *v.* Texas, 105 U. S. 466.
Western Union *v.* Alabama, 132 U. S. 473.
Western Union *v.* Pennsylvania, 128 U. S. 39.
Western Union *v.* New Hope, 187 U. S. 419.
Atlantic, etc., Co. *v.* Philadelphia, 190 U. S. 160.
Postal Tel. Cable Co. *v.* Taylor, 192 U. S. 55.
Postal Tel. Cable Co. *v.* Fremont, 255 U. S. 124.

An ordinance compelling a telegraph company to pay a tax for every pole within the city for the privilege of using the streets, alleys, etc., is a charge in the nature of a rental, and is not a privilege or license tax, which would be invalid as applied to a corporation doing interstate business.

St. Louis *v.* Western Union, 148 U. S. 92.

(*g*) *Steamship companies.*—Municipal ordinance exacting a license fee for the privilege of navigating a stream within the

State by tugs enrolled and licensed in the coasting trade is invalid when the license fee is a tax for the use of navigable waters and not a charge by way of compensation for any specific improvement.

Harman *v.* Chicago, 147 U. S. 404.
Moran *v.* New Orleans, 112 U. S. 70.

Tax imposed upon transportation companies for the privilege of carrying on the business in a corporate capacity within the State, on transportation purely intrastate, is valid as applied to a steamboat company plying navigable waters between points in the same State.

Cornell Steamboat Co. *v.* Sohmer, 235 U. S. 549, distinguishing the case of Harman *v.* Chicago, *supra.*

(*h*) *Ferries.*—License fee imposed upon the keepers of ferries living within the State is not a regulation of commerce.

Wiggins Ferry Co. *v.* East St. Louis, 107 U. S. 373.

The fact that a company engaged in carrying passengers and freight between two States could not lease its wharf in one State, except by the implied consent of the legislature of that State, does not give to that State a right to tax the receiving and landing of passengers and freight at its wharf in that State.

Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 205.

(*i*) *Agents.*—Municipal license tax on railroad and steamboat agents.

McCall *v.* California, 136 U. S. 109.

A State license tax can not be laid upon the business of a corporation employed as agent by owners of vessels engaged exclusively in interstate and foreign commerce where its business is confined to, and is a necessary adjunct of, their commerce. McCall *v.* California, 136 U. S. 104, followed. Ficklen *v.* Shelby County Taxing District, 145 U. S. 1, distinguished.

Texas Transport Co. *v.* New Orleans, 264 U. S. 150.

Privilege tax for keeping an office.—Invalid when imposed by State on interstate carrier.

Norfolk, etc., R. Co. *v.* Pennsylvania, 136 U. S. 118.

(*j*) *Tax on passengers and immigrants.*—Statute providing that "there shall be levied and collected a duty of one dollar for each and every alien passenger who shall come by vessel from a foreign port to the port of New York for whom a tax has not heretofore been paid," is a regulation of commerce with foreign nations, confided by the Constitution to the exclusive control of Congress, notwithstanding that the caption of the act calls it an inspection law.

People *v.* Compagnie Gen. Transatlantique, 107 U. S. 60.

State capitation tax upon every person leaving the State, or passing through it, by any railroad, stage coach, or other vehicle

engaged or employed in the business of transporting passengers for hire, is not void as a regulation of commerce, inasmuch as the tax does not itself institute any regulation of commerce of a national character or which has a uniform operation over the whole country, but, as the operation of such a statute would embarrass the operations of the National Government, it is void.

Crandall *v.* Nevada, 6 Wall. 40.

State statutes imposing taxes on alien passengers are void.

Passenger Cases, 7 How. 283.
See also—
Head Money Cases, 112 U. S. 580.
Henderson *v.* New York, 92 U. S. 259.
Chy Lung *v.* Freeman, 92 U. S. 275.
Lees *v.* U. S., 150 U. S. 476.

(*k*) *Taxation of bridges and bridge companies.*—The taxation by a State of a bridge over a navigable stream is in no proper sense inconsistent with the power of Congress to regulate the use of the river as one of the navigable waters of the United States.

Henderson Bridge Co. *v.* Henderson, 141 U. S. 679; 173 U. S. 622.
Henderson Bridge Co. *v.* Kentucky, 166 U. S. 153.
Keokuk, etc., Bridge Co. *v.* Illinois, 175 U. S. 632.

(*l*) *Tax on owners of grain elevators.*—Statute requiring a license fee from the owners of grain elevators and warehouses situated on the right of way of a railroad is not inconsistent with the commerce clause.

Cargill Co. *v.* Minnesota, 180 U. S. 470.

(*m*) *Tax on oil and gas in pipe lines* held void as to part passing out of the State of production.

Eureka Pipe Line Co. *v.* Hallanan, 257 U. S. 265.
United Fuel Gas Co. *v.* Hallanan, 257 U. S. 277.

Taxation of corporate franchises—(*a*) *In general.*—There is nothing in the nature of things or in the limitations of the Constitution which restrains a State from taxing at its real value intangible property.

Adams Exp. Co. *v.* Ohio, 166 U. S. 185.

The Federal circuit courts have no jurisdiction of an original action in mandamus to compel the return of a franchise tax collected under the authority of a State statute, although the basis of the relief sought is the alleged repugnancy of the tax to the commerce clause.

Covington, etc., Bridge Co. *v.* Hager, 203 U. S. 109.

Statute imposing franchise tax on foreign corporations, measured by capital stock, held invalid as applied to nonresident corporation engaged in both interstate and intrastate commerce.

Looney *v.* Crane Co., 245 U. S. 178.
International Paper Co. *v.* Massachusetts, 246 U. S. 135.
Locomobile Co. *v.* Massachusetts, 246 U. S. 146.

(*b*) *Domestic corporations.*—Statutes levying a tax on every share of capital stock and on the net earnings or increase of a railroad company incorporated in that State does not interfere with the right of transit of persons and property from one State into and through another.

Delaware Railroad Tax, 18 Wall. 232.
Atlantic, etc., Tel. Co. *v.* Philadelphia, 190 U. S. 163.
Philadelphia, etc., S. S. Co. *v.* Pennsylvania, 122 U. S. 345.
Keokuk, etc., Bridge Co. *v.* Illinois, 175 U. S. 632.

(*c*) *As measured by property.*—Franchise tax levied on a railroad company, measured by property, does not lay a burden on interstate commerce from the fact that the considerable portion of its cars constantly out of the State by the familiar course of railroad business had not been deducted from the capital.

New York Cent. R. Co. *v.* Miller, 202 U. S. 584.
Kansas City, etc., R. Co. *v.* Kansas, 240 U. S. 227.
Kansas City, etc., R. Co. *v.* Stiles, 242 U. S. 111.

Nonexcessive tax upon corporation engaged in interstate commerce, assessed upon proportion of value of franchise measured by local business, was sustained in Schwab *v.* Richardson, 263 U. S. 88.

Congressional inaction leaves a State free to impose such burdens on interstate commerce as may result from a statute forbidding sale of corporate stock within State without State license.

Hall *v.* Geiger-Jones Co., 242 U. S. 539.

Franchise tax on capital stock and surplus employed in State does not contravene this clause even if value of franchise is derived partly from interstate business.

St. Louis, etc., R. Co. *v.* Middlekamp, 256 U. S. 226.
St. Louis, etc., R. Co. *v.* Hagerman, 256 U. S. 314.

(*d*) *Foreign corporations.*—A State has the right to tax the franchise or privilege of being a corporation as personal property, and this whether the corporation be a domestic or a foreign corporation doing business by its permission within the State.

Postal Tel. Cable Co. *v.* Adams, 155 U. S. 696.
Underwood Typewriter Co. *v.* Chamberlain, 254 U. S. 113.
St. Louis, etc., R. Co. *v.* Arkansas, 235 U. S. 350.

A State can not, under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in interstate commerce or impose any burdens upon such commerce within its limits.

Norfolk, etc., R. Co. *v.* Pennsylvania, 136 U. S. 118.
See also—
Baltic Mining Co. *v.* Massachusetts, 231 U. S. 68; Horn Silver Mining Co. *v.* New York, 143 U. S. 317; New York *v.* Roberts, 171 U. S. 658, as applied to purely local or domestic business.

Statute taxing all shares of stock in foreign corporations owned by inhabitants of the State, while the property of do-

mestic corporations is taxed in similar cases, is not contrary to the commerce clause.

Darnell *v.* Indiana, 226 U. S. 390.

Merchandise once sold by the importer is taxable as other property.

Waring *v.* The Mayor, 8 Wall. 122.
American Steel, etc., Co. *v.* Speed, 192 U. S. 520.
May *v.* New Orleans, 178 U. S. 501.

The exaction of a license tax for permission to sell goods in the bale or package in which they are imported is an interference with the power of Congress to regulate commerce.

Low *v.* Austin, 13 Wall. 33.
Brown *v.* Maryland, 12 Wheat. 436.

(*e*) *Corporations created by Congress.*—Franchises granted by Congress under the power of the commerce clause are not legitimate subjects of taxation by a State. They are granted for national purposes and to subserve national ends, and a State can neither take them away nor destroy nor abridge them nor cripple them by onerous burdens.

California *v.* Central Pac. R. Co., 127 U. S. 40.
Atlantic, etc., Tel. Co. *v.* Philadelphia, 190 U. S. 163.

The authority to construct and maintain a bridge given by an act of Congress to corporations organized for that purpose by two States did not make them Federal corporations, and State taxes on the capital stock are not taxes on franchises conferred by the Federal Government.

Keokuk, etc., Bridge Co. *v.* Illinois, 175 U. S. 632.

Transfers of stock.—State tax of 2 cents a share on transfers of stock within the State is not an interference with interstate commerce.

Hatch *v.* Reardon, 204 U. S. 152.

Wholesalers of soft drinks.—A nonresident manufacturer of soft drinks doing a business in a municipality in the State which largely consists in carrying a supply of soft drinks from one retailer's place to another's upon the vehicle in which the goods were brought across the State line, exposing them for sale, etc., and selling them in the original unbroken packages, may be required to take out the license required of all wholesalers in soft drinks without infringing the commerce clause.

Wagner *v.* Covington, 251 U. S. 95.

Gas.—The district court, finding a statutory gas rate confiscatory, enjoined public officials from enforcing it, but, as a condition, required the plaintiff gas company to impound with a special master all sums collected from consumers in excess of the rate, pending determination of the case on appeal, and, later, for the protection of the plaintiff and to benefit consumers, per-

mitted the plaintiff to withdraw the fund so accumulated by substituting surety bonds, conditioned for its return with substantial interest should the rate be upheld. The injunction having been affirmed, held, that the premiums paid for the bonds were taxable, and rightly taxed, against the defendants, as costs in conformity with a usage of that district.

Newton *v.* Consolidated Gas Co., 265 U. S. 78.

Gasoline.—State tax, which is in effect a privilege tax upon the business of selling gasoline in the tank cars or other original packages in which the gasoline was brought into the State, and which provides for the levy of fees in excess of the cost of inspection, is invalid as amounting to a direct burden on interstate commerce.

Askren *v.* Continental Oil Co., 252 U. S. 444.
Bowman *v.* Continental Oil Co., 256 U. S. 642.

Coal.—Statute taxing anthracite coal when ready for interstate shipment held not violative of this clause.

Heisler *v.* Thomas Colliery Co., 260 U. S. 245.

Iron ore.—The mining of ore, even when substantially all ore mined is immediately and continuously loaded and shipped into other States to satisfy existing contracts, is not interstate commerce and is subject to local taxation.

Oliver Iron Co. *v.* Lord, 262 U. S. 172.

Manufacturing business.—Municipal license tax upon the conduct of a manufacturing business in the city is not an unconstitutional regulation of interstate commerce merely because the amount of the tax is measured by the amount of sales.

American Mfg. Co. *v.* St. Louis, 250 U. S. 459.

Where a company maintains its principal office within a State and the greater proportion of its business is transacted therein, it must be regarded as engaged in intrastate commerce, at least as to the business transacted within the State, and subject to a State tax thereon.

Hayes Wheel Co. *v.* American Dist. Co., 257 Fed. 881.

Merchandise brokers.—Where a resident of a State engages in general business, as that of a merchandise broker, subject to a particular tax, the fact that the business done chances to consist temporarily, wholly, or partially in negotiating sales between resident and nonresident merchants of goods situated in another State does not necessarily involve the taxation of interstate commerce forbidden by the Constitution.

Ficklen *v.* Shelby County, 145 U. S. 21.
Raley & Bros. *v.* Richardson, 264 U. S. 157.

Local agency as real vendor.—Where the person negotiating a sale, though acting for a nonresident manufacturer or merchant, takes the order upon his own responsibility and liability, and such shipper treats the agent, the consignee, as the real party to the transaction and looks to him for payment, and

there is nothing connecting the ultimate buyer with the shipper, the sale is not an interstate one, but is a domestic sale between the consignee and the ultimate buyer on arrival of the consignment.

Banker Bros. Co. *v.* Pennsylvania, 222 U. S. 210.
Stockard *v.* Morgan, 185 U. S. 27.

Money or exchange brokers.—Statute levying an annual tax on money and exchange brokers is not invalid when applied to a person whose sole business is buying and selling foreign bills of exchange.

Nathan *v.* Louisiana, 8 How. 80.
Brodnax *v.* Missouri, 219 U. S. 285.

Corporate excise tax imposed by State statute on foreign corporation maintaining only local selling office, in which sample goods were kept and from which its salesmen solicited orders subject to approval of home office, violates commerce clause by taxing interstate commerce.

Cheney Bros. Co. *v.* Massachusetts, 246 U. S. 147.

Sunday newspapers.—Statute providing that "there shall be levied and collected from every person, firm, or association of persons selling or offering for sale the Sunday Sun, the Kansas City Sunday Sun, or other publications of like character, whether illustrated or not, the sum of $500 in each county in which sale may be made or offered to be made" is not an encroachment on the commerce clause.

Preston *v.* Finley, 72 Fed. 850.

Business of dealing in futures.—Statute imposing license tax for each person engaged in the business of buying and selling futures for speculation or on commission, either for themselves or for other persons, is not invalid as a regulation of commerce.

Ware & Leland *v.* Mobile County, 209 U. S. 405.
Dozier *v.* Alabama, 218 U. S. 124.
Chicago Board of Trade *v.* Olsen, 262 U. S. 1.

Drummers, canvassers, and sample peddlers—(*a*) *In general.*—Tax applied to an individual within the State selling the goods of his principal, nonresident, is in effect a tax upon interstate commerce, and that fact is not in anywise altered by calling the tax one upon the occupation of the individual residing within the State while acting as the agent of a nonresident principal.

Stockard *v.* Morgan, 185 U. S. 37.
See also—
Stewart *v.* Michigan, 232 U. S. 665.
Crenshaw *v.* Arkansas, 227 U. S. 389.
Rearick *v.* Pennsylvania, 203 U. S. 507.
Corson *v.* Maryland, 120 U. S. 502.
Walling *v.* Michigan, 116 U. S. 446.
Brennan *v.* Titusville, 153 U. S. 289.
Welton *v.* Missouri, 91 U. S. 275.
Emert *v.* Missouri, 156 U. S. 296.

Webber *v.* Virginia, 103 U. S. 344.
Stoutenburgh *v.* Hennick, 129 U. S. 141.
Caldwell *v.* North Carolina, 187 U. S. 622.
Delamater *v.* South Dakota, 205 U. S. 93.
U. S. Fidelity, etc., Co. *v.* Kentucky, 231 U. S. 394.
Browning *v.* Waycross, 233 U. S. 16.

A uniform tax imposed by a municipal corporation on all sales made in it, whether they be made by a citizen of the State or a citizen of some other State, and whether the goods sold are the produce of the State within which the municipal ordinance was passed or some other State, is valid.

Woodruff *v.* Parham, 8 Wall. 123.

State law providing that no person shall retail liquors in less than certain quantities without a license is not unconstitutional as an attempt to regulate commerce.

License Cases, 5 How. 504.
See also—
Heyman *v.* Hays, 236 U. S. 178.
Rhodes *v.* Iowa, 170 U. S. 412.
Adams Exp. Co. *v.* Kentucky, 214 U. S. 218.
Louisville, etc., R. Co. *v.* Cook Brewing Co., 223 U. S. 70.
Clark Distilling Co. *v.* Western Maryland R. Co., 242 U. S 311.
Seaboard Air Line *v.* North Carolina, 245 U. S. 298.

(*b*) *Picture and picture frame statutes and ordinances.*—Where a portrait company, carrying on business in one State, obtains orders through an agent in another State for pictures and frames, the fact that in filling the orders it ships the pictures and frames in separate packages to its own agent for delivery to purchasers does not deprive the transaction of its character of interstate commerce, and a city ordinance requiring the payment of a license fee for such business is an attempt to interfere with interstate commerce and is invalid as to an agent of a corporation residing out of the State.

Caldwell *v.* North Carolina, 187 U. S. 622.
Dozier *v.* Alabama, 218 U. S. 124.
Davis *v.* Virginia, 236 U. S. 697.
Asher *v.* Texas, 128 U. S. 129.

(*c*) *Maintaining distributing point within the State.*—Where a nonresident maintains a warehouse or distributing point within the State from which goods are delivered to a purchaser on an order given to an agent this does not constitute interstate commerce.

Singer Sewing Mach. Co. *v.* Brickell, 233 U. S. 304.
Armour Packing Co. *v.* Lacey, 200 U. S. 226.
Kehrer *v.* Stewart, 197 U. S. 60.
Machine Co. *v.* Gage, 100 U. S. 676.

(*d*) *Absence of discrimination in favor of domestic commerce.*—Statute requiring drummers engaged in soliciting trade for a

house or firm doing business in another State to pay a license is a burden on interstate commerce. The fact that no discrimination is made between domestic and foreign commerce does not render such a tax valid.

Robbins *v.* Shelby County, 120 U. S. 493.
U. S. *v.* Hvoslef, 237 U. S. 1.

(*e*) *Title retained by vendor until purchase price paid.*—Where a sewing machine is shipped into a State to be delivered to the consignee upon payment of the purchase price, the seller is not liable for a State license tax, such tax being an interference with interstate commerce.

Norfolk, etc., R. Co. *v.* Sims, 191 U. S. 451.

Trading stamps.—A tax on merchants using redeemable coupons or profit-sharing certificates is not a tax on interstate commerce as applied to coupons issued and redeemed by the retail merchant himself.

Rast *v.* Van Deman, 240 U. S. 342.
Pitney *v.* Washington, 240 U. S. 387.

Mail-order business.—One having a stock of liquors on hand within the State and engaged in the business exclusively of carrying on a mail-order business—that is, the soliciting of orders from persons in other States by mail, the receipt of such orders, and the filling of the same by delivering to a carrier for through transportation out of the State—is engaged in interstate commerce and can not be subjected to a State tax for carrying it on.

Heyman *v.* Hays, 236 U. S. 178.

Lightning-rod agents.—Ordinance imposing a tax upon "lightning-rod agents or dealers engaged in putting up or erecting lightning rods within the corporate limits," is valid as applied to one engaged in the business of soliciting orders for a nonresident, and whose duty it is, as included in the price paid to the nonresident for the rods, to erect them without further charge.

Browning *v.* Waycross, 233 U. S. 16.

Property in transit.—While the property is at rest for an indefinite time awaiting transportation, or awaiting a sale at its place of destination, or at an intermediate point, it is subject to taxation. But if it be actually in transit to another State it becomes the subject of interstate commerce and is exempt from local assessment.

Bacon *v.* Illinois, 227 U. S. 504.
Susquehanna Coal Co. *v.* South Amboy, 228 U. S. 665.
Pittsburgh, etc., Coal Co. *v.* Bates, 156 U. S. 584.
Brown *v.* Houston, 114 U. S. 622.
Diamond Match Co. *v.* Ontonagon, 188 U. S. 96.

Western Oil Ref. Co. *v.* Lipscomb, 244 U. S. 346.
Coe *v.* Errol, 116 U. S. 524.
Kehrer *v.* Stewart, 197 U. S. 67.
Armour Packing Co. *v.* Lacy, 200 U. S. 226.

Insurance premiums.—State tax upon the excess of premiums received over losses and ordinary expenses incurred within the State is valid.

New York Life *v.* Deer Lodge County, 231 U. S. 495.
See also—
People *v.* National Fire Ins. Co., 27 Hun (N. Y.) 193, in which case Cook *v.* Pennsylvania, 97 U. S. 566, is relied upon and distinguished.
Nutting *v.* Massachusetts, 183 U. S. 553.
Northwestern, etc., Ins. Co. *v.* Wisconsin, 247 U. S. 132.
National Union *v.* Wanberg, 260 U. S. 71.

Live-stock grazing in the State.—A flock of sheep driven without unnecessary delay across a State for shipment, and not for the purpose of grazing, is interstate commerce to such an extent as to be exempt from taxation by the State through which it was being transported.

Kelley *v.* Rhoads, 188 U. S. 4.

Income from interstate business.—A State, in levying a general income tax on the gains and profits of a domestic corporation, may include in the computation the net income derived from transactions in interstate commerce, where there is no discrimination against interstate commerce.

U. S. Glue Co. *v.* Oak Creek, 247 U. S. 321.

Commerce with Indians and Indian Tribes

Power of Congress in General

Congress possesses plenary power over the tribal relations and lands of the Indians, and the action of Congress with reference thereto is conclusive upon the courts.

Lone Wolf *v.* Hitchcock, 187 U. S. 553.
U. S. *v.* Cisna, 1 McLean, U. S. 254.

The power of Congress over commerce between Arkansas and the Indian Territory is not less than its power over commerce among the States.

Hanley *v.* Kansas City, etc., R. Co., 187 U. S. 617.
Ex parte Webb, 225 U. S. 663.
Whitney *v.* Dick, 202 U. S. 132.

Definition of "Commerce with the Indian tribes"

Commerce with foreign nations means commerce between citizens of the United States and citizens or subjects of foreign governments as individuals, and so commerce with the Indian tribes means commerce with the individuals composing those tribes.

U. S. *v.* Holliday, 3 Wall. 417.

Indians as Wards of the Government.

The recognized relation between the Government and the Indians is that of a superior and an inferior whereby the latter is placed under the care and control of the former.

Matter of Heff, 197 U. S. 488.

Whether, to what extent, and for what length of time distinctly Indian communities within the borders of the United States shall be recognized and dealt with as independent tribes, requiring the guardianship and protection of the United States, are questions to be determined by Congress and not by the courts.

U. S. *v.* Sandoval, 231 U. S. 28.

The guardianship of the Federal Government over an Indian does not cease when allotment is made and the allottee becomes a citizen.

Bowling *v.* U. S., 233 U. S. 528.
Lane *v.* Morrison, 246 U. S. 214.

Status of Indian Nations or Tribes.

The Indian tribes have always been recognized as distinct communities, and have been permitted to a large extent to make and enforce the laws for their own government; but they are in no sense sovereign nations, and are, like all other communities within the territory of the United States, subject to the paramount authority of Congress, which may, in its discretion, assume such part of the control and government of any tribe as, in its judgment, is necessary, or for the best interest of the members.

Stephens *v.* Cherokee Nation, 174 U. S. 445.
Cherokee Nation *v.* Georgia, 5 Pet. 1.

Jurisdiction of States Over Indians.

No State can, either by its constitution or other legislation withdraw the Indians within its limits from the operation of the laws of Congress regulating trade with them, notwithstanding any rights it may confer on them as electors or citizens.

U. S. *v.* Holliday, 3 Wall. 419.

State statute making it unlawful for any persons other than Indians to settle or reside on any lands belonging to or occupied by any nation or tribe of Indians within the State and providing for their summary ejectment held not to conflict with the Constitution.

New York *v.* Dibble, 21 How. 366.
Worcester *v.* Georgia, 6 Pet. 515.

Indians as Citizens.[1]

Citizenship is not in itself an obstacle to the exercise by Congress of its power to enact laws for the benefit and protection of tribal Indians as a dependent people.

U. S. *v.* Sandoval, 231 U. S. 28.

Act July 1, 1902 (c. 1362, 32 Stat. 641), whereby a citizenship court was created in the Indian Territory and empowered to re-

[1] See also Amendment 14, sec. 2, p. 742.

view the final judgments of the courts of the United States under act June 10, 1896 (29 Stat. 339), which had been affirmed by the Supreme Court, was constitutional and valid against successful litigants who had not procured allotments before its passage.

Wallace *v.* Adams, 204 U. S. 415.
See also—
Stephens *v.* Cherokee Nation, 174 U. S. 445.
Heckman *v.* U. S. 224 U. S. 413.
Hallowell *v.* U. S. 221 U. S. 317.
Tiger *v.* Western Inv. Co., 221 U. S. 286.

Lands and Funds of Indians.

Indians as tribes could sell to the Government of the discoverer, but could not sell to any other government, or its subjects, for the Government by discovery acquired the exclusive preemption right of purchase and the right to exclude the subjects of other governments, and even its own, from acquiring title to Indian lands.

Holden *v.* Joy, 17 Wall. 244.

Neither the provisions of the Indian appropriation acts of 1896 and 1897, authorizing the Dawes Commission to determine claims to citizenship in any of the Five Tribes of the Indian Territory, nor of the Curtis Act of 1898, were unconstitutional as an impairment of vested rights, since the land and moneys of those tribes were public moneys and were not held in individual ownership.

Stephens *v.* Cherokee Nation, 174 U. S. 445.

The lands of the Pueblo Indians in New Mexico, although held in communal fee-simple ownership by the Indians of each pueblo, are subject to the legislation of Congress, enacted in the exercises of the Government's guardianship over such Indian communities and their affairs.

U. S. *v.* Sandoval, 231 U. S. 28.
Hallowell *v.* Commons, 239 U. S. 506.

Alienation of Lands in General

Congress has power to limit the alienation of lands by an Indian.

Taylor *v.* Brown, 147 U. S. 640

It is within the power of Congress to enlarge the period within which an Indian allottee is prohibited from alienating his land beyond that imposed when the allotment was made, so long as the land is held by the allottee, although in the meantime he may have been made a citizen.

Heckman *v.* U. S., 224 U. S. 413.
See also—
U. S. *v.* Mille Lac Band, 229 U. S. 498.
Monson *v.* Simonson, 231 U. S. 341.
Gannon *v.* Johnston, 243 U. S. 108.

Egan *v.* McDonald, 246 U. S. 227.
Brader *v.* James, 246 U. S. 88.
McCurdy *v.* U. S., 246 U. S. 263.

The rights of lessees of the heir of an Indian to whom title to land was granted by an Indian treaty can not be divested by any subsequent action of the lessor, or of Congress, or of the executive departments.

Jones *v.* Meehan, 175 U. S. 1.

Actions by or Against Indians

A United States citizen who has become a citizen of an Indian nation by marriage with one on whom citizenship in the nation has been conferred by the legislature of the nation, but who has ceased to be such owing to a withdrawal by the legislature of all rights of citizenship possessed by his wife, may enforce his claim against one of that nation in the Federal courts.

Roff *v.* Burney, 168 U. S. 218.

Offenses by or Against Indians

Where the country occupied by Indians is not within the limits of any of the States, Congress may, by law, punish any offense committed there, whether the offender be a white man or an Indian.

U. S. *v.* Rogers, 4 How. 572.

Independently of any question of title, the Federal courts have jurisdiction of crimes committed by Indians on a reservation, for, regarding them as the wards of the Nation, the United States has full power to pass such laws as may be necessary to their full protection, and to punish all offenses committed against them or by them within the reservation.

U. S. *v.* Thomas, 151 U. S. 577.
Donnelly *v.* U. S., 228 U. S. 243.
U. S. *v.* Kagama, 118 U. S. 375.
U. S. *v.* Celestine, 215 U. S. 278.

Intoxicating Liquors to Indians

A stipulation in a treaty with an Indian tribe that laws prohibiting the introduction of liquors in Indian country should apply to the territory ceded by the treaty to be valid and operative without legislation, and binding upon the courts, though the ceded territory was within an organized county of a State.

U. S. *v.* Whisky, 93 U. S. 194.

The power to protect the Government's Indian wards against the evils of intemperance is sufficiently comprehensive to enable Congress, when securing the cession of part of an Indian reservation within a State, to prohibit the sale of intoxicants upon the ceded lands if, in its judgment, that is reasonably essential to the protection of the Indians residing on the unceded lands.

Perrin *v.* U. S., 232 U. S. 478.

Act Feb. 12, 1862, making it penal to sell spiritous liquors to an Indian under charge of an Indian agent, though sold outside of any Indian reservation and within the limits of a State, held to be constitutional.

U. S. *v.* Holliday, 3 Wall. 416.
See also—
Dick *v.* U. S., 208 U. S. 340.
U. S. *v.* Sutton, 215 U. S. 291.
Johnson *v.* Gearlds, 234 U. S. 422.
Ex parte Crow Dog, 109 U. S. 556.
U. S. *v.* Nice, 241 U. S. 591.

Regulating Ownership and Distribution of Property of Indians

Legislation assuming control of Indians, affecting membership in the various tribes and regulating the ownership and distribution of their property, is within the power of Congress.

Stephens *v.* Cherokee Nation, 174 U. S. 445.
See also—
U. S. *v.* Rowell, 243 U. S. 464.
Cherokee Nation *v.* Hitchcock, 187 U. S. 294.
Morris *v.* Hitchcock, 194 U. S. 388.
Tiger *v.* Western Inv. Co., 221 U. S. 286.
Heckman *v.* U. S., 224 U. S. 413.
Bowling *v.* U. S., 233 U. S. 528.
Gritts *v.* Fisher, 224 U. S. 640.
Sperry Oil Co. *v.* Chisholm, 264 U. S. 488.

Power to Suppress Disturbances

When disturbances with Indians occur without any efficient power in the State to make a change it becomes necessary for the United States to use its constitutional right to give relief.

Howard *v.* Ingersoll, 13 How. 410.

Clause 4.—NATURALIZATION AND BANKRUPTCIES.

The Congress shall have power . . . To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.

Naturalization

Leading Cases

U. S. *v.* Wong Kim Ark (169 U. S. 649), wherein the court held (Chief Justice Fuller and Justice Harlan dissenting) that "a child born in the United States of parents of Chinese descent who at the time of his birth are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States."

In Osborn *v.* U. S. Bank (9 Wheat. 738) Chief Justice Marshall, speaking of the rights of a naturalized citizen, says (p. 827):

> He becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the National Legislature is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual.

But the Chief Justice hastened to qualify this language in the following words:

> He is distinguishable in nothing from a native citizen except so far as the Constitution makes the distinction.

A naturalized citizen can not become President or Vice President in any event, and he may not even be a Member of Congress until he has resided in the country a prescribed time.[1]

Gonzales *v.* Williams (192 U. S. 1), involving the naturalization by treaty of the citizens of Mexico *en masse*.

Definition

In Boyd *v.* Thayer, 143 U. S. 162, Chief Justice Fuller said: "Naturalization is the act of adopting a foreigner and clothing him with the privileges of a native citizen," apparently following the language of Marshall, quoted above, but a naturalized person may not be elected to the office of President, a privilege of a "native citizen" only.

Operation and Effect

Naturalization has a retroactive effect and removes all liability to forfeiture of land held while an alien, and where an alien takes by grant or by location of public lands, his subsequent naturalization relates back and obviates every consequence of his alien disability. The naturalization of a father gives citizenship to his minor children, but the status acquired by minors at the time their father filed his declaration of intention may be repudiated if they attain their majority before he is naturalized. A minor child who was in the country at the time of the passage of the act of April 14, 1802, acquired citizenship, although he was not in the country at the time of naturalization.

Osterman *v.* Baldwin, 6 Wall. 122.
Manuel *v.* Wulff, 152 U. S. 511.
Governeur *v.* Robertson, 11 Wheat. 350.

Grant of Power

The power of naturalization vested in Congress by the Constitution is a power to confer citizenship and not a power to take it away.

U. S. *v.* Wong Kim Ark, 169 U. S. 703.

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[1] See Art. I, sec. 2, p. 64, and Art. II, sec. 1, cl. 5, p. 382.

A naturalized citizen is indeed made a citizen under an act of Congress, but the act does not proceed to give, to regulate, or to prescribe his capacities.

Osborn *v.* U. S. Bank, 9 Wheat. 827.
Pintsch Compressing Co. *v.* Bergin, 84 Fed. 140.

The act of Congress of June 29, 1906, authorizing an action to cancel a certificate of naturalization for having been obtained by fraud is not invalid for permitting the suit to be brought in the place where the defendant then resides instead of the court in which the certificate was obtained.

U. S. *v.* Mansour, 170 Fed. 671.

The original status of an alien is presumed to continue until the contrary be shown.

Hauenstein *v.* Lynham, 100 U. S. 484.

The power of naturalization is exclusively in Congress and has always been held by the Supreme Court to be so. It is not in the power of a State to denationalize a foreign subject who has not complied with the Federal naturalization laws and constitute him a citizen of the United States or of a State, so as to deprive the Federals courts of jurisdiction over a controversy between him and a citizen of a State, conferred upon them by Art. III, sec. 2 of the Constitution.

Chirac *v.* Chirac, 2 Wheat. 269.
Scott *v.* Sanford, 19 How. 405.
Minneapolis *v.* Reum, 56 Fed. 576.
See also—
License Cases, 5 How. 585.
Ogden *v.* Saunders, 12 Wheat. 276.
Houston *v.* Moore, 5 Wheat. 49.
U. S. *v.* Villato, 2 Dall. 370.
Passenger Cases, 7 How. 283.

Citizenship by Birth or by Naturalization

The distinction is clearly marked in the Constitution, by which "no person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President"; and "the Congress shall have power to establish a uniform rule of naturalization."

Elk *v.* Wilkins, 112 U. S. 101.
Luria *v.* U. S., 231 U. S. 9.

Citizenship in the United States and citizenship in a State are distinct and may be separately acquired. A resident of the District of Columbia may be a citizen of the United States but not a citizen of any State, and it would seem that one might be a citizen of a State without being a citizen of the United States, although the authorities differ on this point.

U. S. *v.* Cruikshank, 92 U. S. 542.
Hepburn *v.* Ellzey, 2 Cranch 445.
Hammerstein *v.* Lyne, 200 Fed. 165.

A State can not make an alien a citizen of the United States, although it may confer upon an alien the privileges which it confers upon its citizens. In the Federal laws no distinction is made between native-born and naturalized citizens except as to eligibility to the Presidency and Vice Presidency.

Lanz *v.* Randall, 4 Dill (U. S.) 425.
See also—
Slaughter House Cases, 16 Wall. 73.
Collet *v.* Collet, 2 Dall. 294.

The naturalization of an alien may be revoked for disloyalty.

U. S. *v.* Herberger, 272 Fed. 278.

Uniform Rule

When a naturalization law is made by its terms applicable alike to all the States of the Union, without distinction or discrimination, it can not be successfully questioned on the ground that it is not uniform, in the sense of the Constitution, merely because its operation or working may be wholly different in the various States.

Darling *v.* Berry, 13 Fed. 659.

Collective Naturalization

The nationality of the inhabitants of territory acquired by conquest or cession becomes that of the Government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal or otherwise, as may be provided.

Boyd *v.* Thayer, 143 U. S. 162.

The natives of the territory ceded under the treaty with Mexico in 1842 were naturalized *en masse*, except those who chose to remain citizens of Mexico.

Gonzales *v.* Williams, 192 U. S. 1.

On the conclusion of the treaty of peace of 1783 all persons then adhering to the United States, whether born in the country or not, were absolved of their allegiance to Great Britain, while adherents of Great Britain remained British subjects.

McIlvaine *v.* Coxe, 4 Cranch 209; practically overruled in Inglis *v.* Sailor's Snug Harbour, 3 Pet. 99, wherein it is said (p. 121) "our rule is to take the date of the Declaration of Independence."
See also—
Shanks *v.* Dupont, 3 Pet. 242, with dissenting opinion by Justice Johnson.

The transfer of territory from one country to another necessarily involves a transfer of the allegiance of its inhabitants, but the latter do not necessarily become citizens of their new country. This is exemplified in the present status of the Porto Ricans and Filipinos. But all the citizens of the ceded territory may be made citizens at once, as was done in the case of Texas.

Contzen *v.* U. S., 179 U. S. 191.
Osterman *v.* Baldwin, 6 Wall. 116.

Who May be Naturalized[1]

In Ozawa *v.* U. S. (260 U. S. 178) it was held that members of the Japanese race were not eligible to naturalization. This was affirmed in Yamashita *v.* Hinkle, 260 U. S. 199.

Native Mexicans may be naturalized and become American citizens, and likewise an alien who is ignorant of English and who can not explain the principles of the Constitution is nevertheless entitled to be naturalized where it is clearly shown that he is thoroughly law-abiding and industrious and of good moral character.

In re Rodriguez, 81 Fed. 337.

Naturalization is not a right which the United States is bound to confer upon anyone who seeks to be naturalized, and the Government may exercise its judgment in particular cases. In other words, it may exclude "undesirable citizens." A Japanese of the Mongolian race has been refused naturalization. Indians might have been naturalized, but they have not. An Indian who was born within the United States, and has severed his tribal relations, and fully and completely surrendered himself to the jurisdiction of the United States, and is a *bona fide* resident of the State of Nebraska, does not show that he is a citizen of the United States under the fourteenth amendment. So "a member of an Indian tribe residing within the limits of the United States, who has not been naturalized, is not a citizen of the United States nor of the State of his residence, nor is he a citizen or subject of a foreign State within the meaning of the Constitution.

Fong Yue Ting *v.* United States, 149 U. S. 698.
Scott *v.* Sandford, 19 How. 420.
Elk *v.* Wilkins, 112 U. S. 94.
Paul *v.* Chilsoquie, 70 Fed. 401.

In Ex parte Sauer (81 Fed. 355) the naturalization of a Socialist was refused on the ground that it would be contrary to the applicant's oath of naturalization and violative of the spirit and principles upon which this Government is founded and depends for its welfare.

Certificate of Naturalization

A certificate of naturalization issued from a court of record when there has been proper proof made of a residence of five years, and that the applicant is of the age of twenty-one years, and is of good moral character is against all the world a judgment of citizenship from which may follow the right to vote and hold property. It is conclusive as such, but it can not in a distinct proceeding be introduced as evidence of the residence or age at any particular time or place or of the good character of the applicant.

Mutual Benefit Life Ins. Co. *v.* Tisdale, 91 U. S. 238.
U. S *.v.* Knight, 291 Fed. 129.

[1] The question of who may be naturalized is now controlled by statute. (Act of June 29, 1906.)

Naturalization under the laws can only be completed before a court and the usual proof of naturalization is a copy of the record of the court. But where no record of naturalization can be produced evidence that a person having the requisite qualifications to become a citizen did in fact and for a long time vote and hold office and exercise rights belonging to citizens is sufficient to warrant a jury in inferring that he had been duly naturalized as a citizen.

Boyd *v.* Thayer, 143 U. S. 135.

The oath prescribed by the naturalization act when taken confers citizenship and an order of court admitting the applicant is necessary.

Campbell *v.* Gordon, 6 Cranch 182.
Stark *v.* Chesapeake Ins. Co., 7 Cranch 420.
Spratt *v.* Spratt, 4 Pet. 393.

Right of Expatriation

The Constitution is silent on this subject, and that department which can nationalize must be held to have authority to expatriate.

Comitis *v.* Parkerson, 56 Fed. 558.
See also—
Shanks *v.* Dupont, 3 Pet. 242.
Inglis *v.* Sailor's Snug Harbor, 3 Pet. 99.
The *Santissima Trinidad*, 7 Wheat. 283.
The *Venus*, 8 Cranch, 253.
The *Charming Betsy*, 2 Cranch 64.
Talbot *v.* Janson, 3 Dall. 133.

The act of March 2, 1907, in providing that when any naturalized citizen shall have resided for two years in the foreign State from which he came it shall be presumed that he has ceased to be an American citizen, does not apply to a retired officer of the Navy who resided abroad with the permission of the Navy Department.

U. S. *v.* Gay, 264 U. S. 353.

Jurisdiction of State Courts

Congress has authority to vest in the courts of the States having common-law jurisdiction the judicial power to admit qualified aliens to citizenship, and in the absence of legislative authority or permission from the States which created them, such courts may lawfully exercise this power.

Levin *v.* U. S., 128 Fed. 826.
Holmgren *v.* U. S., 217 U. S. 509.

A State can only confer citizenship upon a person within its own limits and not for the entire Nation.

Scott *v.* Sandford, 19 How. 393.

Notwithstanding the rights of citizenship under the State and Federal Governments differ, a citizen of the United States is a citizen of the State where he resides.

U. S. *v.* Cruikshank, 92 U. S. 549.
Gassies *v.* Ballon, 6 Pet. 761.

Bankruptcies

Leading Cases

Sturges *v.* Crowninshield (4 Wheat. 122), holding that since the adoption of the Constitution of the United States a State has authority to pass a bankrupt law, provided such law do not impair the obligation of contracts within the meaning of Article I, section 10, of the Constitution; and provided there be no act of Congress in force to establish a uniform system of bankruptcy, conflicting with such law. The New York statute of April 3, 1811, which not only liberates the person of the debtor, but discharges him from all liability for any debt contracted previous to his discharge, on his surrendering his property in the manner it prescribes, is, so far as it attempts to discharge the contract, a law impairing the obligation of contracts, within the meaning of the Constitution, and is not a good plea in bar of an action brought upon such contract; and that the obligation of a contract is not satisfied by a *cessio bonorum;* it extends to future acquisitions; but the imprisonment of the debtor is no part of the contract, and he may be released without impairing the obligation.

It was held in Ogden *v.* Saunders (12 Wheat. 213) that a State insolvent law, which discharges both the person of the debtor and his future acquisitions, is not unconstitutional so far as respects debts contracted with citizens of the same State. To the same effect is the holding in Baldwin *v.* Hale (1 Wall. 223). But a discharge under such law does not bar the rights of citizens of other States, unless they come in and make themselves parties by receiving a dividend.

Clay *v.* Smith, 3 Pet. 411.
See also—
Boyle *v.* Zacharie, 6 Pet. 635.
Suydam *v.* Brodnax, 14 Pet. 67.
Cook *v.* Moffatt, 5 How. 295.
Baldwin *v.* Bank of Newbury, 1 Wall. 234.
Gilman *v.* Lockwood, 4 Wall. 409.

A State bankrupt or insolvent law, so far as it attempts to discharge the contract, is repugnant to the Constitution, and it makes no difference in the application of this principle whether the law was passed before or after the debt was contracted. A discharge under a foreign bankrupt law is no bar to an action, in the courts of this country, on a contract made here.

McMillan *v.* McNeill, 4 Wheat. 209.

Prior to 1841 there was no act of Congress permitting voluntary bankruptcy in the United States, but in that year Congress passed an act under which debtors could voluntarily take the benefit of the bankrupt law, and such has been the law since. The purpose of the passage of such laws was to secure equality of distribution of the property of the bankrupt.

Pirie *v.* Chicago Title & Trust Co., 182 U. S. 438.
See also—
Sturges *v.* Crowninshield, 4 Wheat. 196.
Toof *v.* Martin, 13 Wall. 40.
Wager *v.* Hall, 16 Wall. 599.
Dutcher *v.* Wright, 94 U. S. 557.
U. S. *v.* Hooe, 3 Cranch 91.
Wilson *v.* City Bank, 17 Wall. 487.
National Bank *v.* Colby, 21 Wall. 613.

Grant of Power

The power conferred on Congress does not carry with it the restrictions of the English bankruptcy system, but it is general and unlimited. It gives to Congress the unrestrained authority over the entire subject. It embraces voluntary and involuntary bankruptcy, and Congress may be authorized to distribute generally all the property of the debtor among his creditors, and to annul the debt.

Matter of Klein, 1 How. 277.

Act of Congress establishing a uniform system of bankruptcy throughout the United States is constitutional, although providing that others than traders be adjudged bankrupts.

Hanover Nat. Bank *v.* Moyses, 186 U. S. 187.
U. S. *v.* Fisher, 2 Cranch 358.
Pirie *v.* Chicago Title & Trust Co., 182 U. S. 438.

Congress may embrace within its legislation whatever may be deemed important to a complete and effective bankrupt system. The object of such a system is to secure a ratable distribution of the bankrupt's estate among his creditors, when he is unable to discharge his obligations in full, and at the same time to relieve the honest debtor from legal proceedings for his debts upon a surrender of his property. The distribution of the property is the principal object to be attained. The discharge of the debtor is merely incidental, and is granted only where his conduct has been free from fraud in the creation of his indebtedness or the disposition of his property.

U. S. *v.* Fox, 95 U. S. 672, in which it was held that the act of Congress (Rev. Stat. sec. 5132) making criminal the obtaining of goods under false pretenses by a person against whom within three months thereafter bankruptcy proceedings should be commenced related to a matter which concerned only the State in which the act was committed.
See also—
Forsyth *v.* Vehmeyer, 177 U. S. 182.
Tinker *v.* Colwell, 193 U. S. 473.

See Page *v.* Edmunds (187 U. S. 596) for definition of "property."

The recognition of the local law, in a bankruptcy act, in the matter of exceptions, dower, priority of payments, and the like is not an attempt by Congress to unlawfully delegate its legislative power.

Hanover Nat. Bank *v.* Moyses, 186 U. S. 190.
Stellwagen *v.* Clum, 245 U. S. 605.

Uniform Laws

The emphasis is on the words "uniform" and "throughout," and their correlation leaves no doubt that the uniformity required is geographical and not personal, in the sense of being alike applicable to all members of the community.

Leidigh Carriage Co. *v.* Stengel, 95 Fed. 637.

When a bankrupt law is made by its terms applicable alike to all the States of the Union without distinction or discrimination, it can not be successfully questioned on the ground that it is not uniform, in the sense of the Constitution, merely because its operation or working may be wholly different in one State from another.

Darling *v.* Berry, 13 Fed. 656.

The provision in the bankruptcy act that the statute shall not affect the allowance to bankrupts of their exemptions which are prescribed by the State laws in force at the time of the filing of the petition is not in derogation of the limitation of uniformity. The system is, in the constitutional sense, uniform throughout the United States when the trustee takes in each State whatever would have been available to the creditors if the bankrupt law had not been passed. The general operation of the law is uniform, although it may result in certain particulars differently in different States.

Hanover Nat. Bank *v.* Moyses, 186 U. S. 190.

Notwithstanding the constitutional provision, recognition and enforcement by bankruptcy act of State laws affecting dower, exemptions, etc., held not to affect its constitutionality.

Stellwagen *v.* Clum, 245 U. S. 605.

Exclusive Powers of Congress

Congress having established "uniform laws on the subject of bankruptcies," the jurisdiction becomes exclusive throughout the United States, and State laws in conflict therewith are suspended.

Lamp Chimney Co. *v.* Ansonia Brass, etc., Co., 91 U. S. 661.
Matter of Klein, 1 How. 277.
Boese *v.* King, 108 U. S. 379.
Mayer *v.* Hellman, 91 U. S. 496.
Globe Bank, etc., Co. *v.* Martin, 236 U. S. 288.
Peck *v.* Jenness, 7 How. 612.

An arrangement between a railway company in Canada, unable to meet its obligations, and the majority of its creditors, confirmed by an act of the Dominion Parliament, was held to be binding upon nonconsenting mortgage bondholders, citizens of the United States.

Canada Sou. R. Co. *v.* Gebhard, 109 U. S. 539.

Books and papers in possession of receiver in bankruptcy appointed by Federal court can not be taken by subpœna issuing from State court unless Federal court, exercising its discretion with due regard for comity, consents.

Dier *v.* Banton, 262 U. S. 147.

Section 67f of the bankruptcy act does not invalidate a lien obtained by levy of an execution within the four months preceding the filing of the petition in bankruptcy on which the judgment debtor is adjudged a bankrupt, if the debtor was in fact solvent when the levy was made. Congress has power to confer upon the bankruptcy court jurisdiction to adjudicate the rights of trustees in bankruptcy to property adversely claimed, when not in the possession of the bankruptcy court, and may determine to what extent jurisdiction shall be exercised by summary proceedings and to what extent by plenary suit.

Taubel Co. *v.* Fox, 264 U. S. 426.

Section 8 of the bankruptcy act, providing that the death of a bankrupt shall not abate the proceedings, held inapplicable to so much of the petition as sought the bankruptcy of the firm and the other partners, they not consenting to such adjudications.

Meek *v.* Centre County Co., 264 U. S. 499.

Where a person obtained money by fraudulent representations from many others upon his time notes for the amounts borrowed and 50 per cent, but, to stimulate public confidence, gave it out that he would return the amount borrowed on any note at any time before its maturity and pursued that practice, held, that lenders who took advantage of this offer and secured repayment shortly before his bankruptcy, when they had reason to believe him insolvent, were not thereby rescinding their contracts for the fraud and reclaiming their own funds, but were creditors equally with the others who filed their claims for reimbursement in the bankruptcy proceedings; and that the repayments thus made were illegal preferences recoverable by the bankrupt's trustees.

Cunningham *v.* Brown, 265 U. S. 1.

Powers of the States

In the absence of congressional action the States may enact insolvent laws. It is the actual exercise of the power by Congress to pass bankrupt laws, and not the mere grant to Congress, that precludes its exercise on the part of the States. State laws are not abrogated by the passage of a national act; they continue in force up to the time when the national act goes into effect, and discharges granted under them are valid, and where a State court has acquired jurisdiction in insolvency it may proceed to judgment. As to future cases under State laws, however, a national act suspends all jurisdiction upon becoming operative.

Sturges *v.* Crowninshield, 4 Wheat. 196.
Ogden *v.* Saunders, 12 Wheat. 264.
Cook *v.* Moffatt, 5 How. 295.
Bank of Tennessee *v.* Horn, 17 How. 157.
Ex parte Christy, 3 How. 318.
McMillan *v.* McNeill, 4 Wheat. 209.
Farmers', etc., Bank *v.* Smith, 6 Wheat. 131.
Planters' Bank *v.* Sharp, 6 How. 328.
Williams *v.* Bruffy, 96 U. S. 184.
Brown *v.* Smart, 145 U. S. 454.
Gilman *v.* Lockwood, 4 Wall. 410.
Baldwin *v.* Hale, 1 Wall. 229.
Tua *v.* Carriere, 117 U. S. 201.
Denny *v.* Bennett, 128 U. S. 489.

The repeal of acts of Congress in regard to bankruptcy removes the obstacle to the operation of the insolvency laws of the State, and does not render necessary their reenactment.

Butler *v.* Goreley, 146 U. S. 303.

While a State insolvent law which discharges both the person of the debtor and his future acquisitions of property is not a law impairing the obligations of contracts as to debts contracted subsequent to its passage, the certificate of discharge can not be pleaded in bar of an action by a citizen of another State.

Boyle *v.* Zacharie, 6 Pet. 635.
Suydam *v.* Broadnax, 14 Pet. 74.

Clause 5.—COINAGE, WEIGHTS, AND MEASURES.

The Congress shall have power . . . To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.[1]

Definition of Coinage

Coinage is the conversion of metal into money by governmental direction and authority. It means to mold into form a

[1] See also Art. I, sec. 8, cl. 2, "To borrow money," p. 81, and Art I, sec. 10, cl. 1, "No State shall coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts," pp. 271–273.

metallic substance of intrinsic value and stamp on it its legal value.

Griswold *v.* Hepburn, 63 Ky. (2 Duvall), 20.

Exclusive Power of Congress

This clause confers upon Congress the exclusive power to coin money and regulate its value as well as to regulate the value of foreign coin. It was so delegated to create and preserve the uniformity and purity of the standard of value and was founded on public necessity. Had this power been left to the States there would have been no national coinage and no constant or uniform value of the coin. Congress has from time to time exercised its authority under this clause, the first act being passed April 2, 1792.

U. S. *v.* Marigold, 9 How. 568.

Act of Congress of July 13, 1866, held constitutional. In the constitutional exercise of its power to provide a currency Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority.

Veazie Bank *v.* Fenno, 8 Wall. 549.
See also—
National Bank *v.* U. S., 101 U. S. 1.
Briscoe *v.* Kentucky Bank, 11 Pet. 257.
Houston *v.* Moore, 5 Wheat. 49.
Sturges *v.* Crowninshield, 4 Wheat. 193.
Ling Su Fan *v.* U. S., 218 U. S. 302.

Farm loan act of 1917, making such banks depositaries of public money and authorizing their employment as financial agents of Government, etc., held within power of Congress.

Smith *v.* Kansas City Title Co., 255 U. S. 180.

Purpose of Clause

The purpose of the framers of the Constitution in conferring upon Congress the power to coin money was to provide a currency which would have the same legal value in all the States, and this power was expressly denied to the States. The Constitution does not prescribe what metals shall be coined or say that their legal value, after being coined, shall correspond with their intrinsic value. Congress can say what metal shall be coined, fix its purity, and its value as money in its relation to its value as bullion.

Legal Tender Cases, 12 Wall. 545.

Details of Coinage

The power of Congress to enact legislation concerning the coinage of money extends even to the details of the subject and to the conduct and transactions of individuals concerning it. Congress has the power under this clause to authorize the issuing

of coins of the same denominations as those already in existence and circulating as money, but of less intrinsic value, because they contain less of the precious metals, and consequently have less weight, and thus enable debtors to discharge their obligations by paying in coins of less real value.

Civil Rights Cases, 109 U. S. 18.
Legal Tender Cases, 110 U. S. 449.

Power to Issue Treasury Notes

There can be no question of the power of Congress to emit bills of credit, to make them receivable in payment of debts to itself, to fit them for use in all transactions of commerce, to provide for their redemption, to make them a currency uniform in value and description, and convenient and usable for circulation.

Veazie Bank *v.* Fenno, 8 Wall. 542.

Weights and Measures

The power to fix the standard of weights and measures, while granted to Congress by this clause, has never been expressly denied to the States, and on the principle that it is not the grant of power to Congress, but its actual exercise of that power that makes its action exclusive, the States may exercise this power in the absence of congressional legislation. Any action by Congress in the matter, of course, would render any conflicting State legislation void.

Houston *v.* Moore, 5 Wheat. 49.
Sturges *v.* Crowninshield, 4 Wheat. 193.
Ogden *v.* Saunders, 12 Wheat. 275.
Weaver *v.* Fegely, 29 Pa. St. 27.
Compare—
The *Miantinomi*, 3 Wall. Jr. (C. C.) 46.

Clause 6.—COUNTERFEITING.

The Congress shall have power . . . To provide for the Punishment of counterfeiting the Securities and current Coin of the United States.

Powers of Congress

Act of Congress providing for the punishment of persons making or passing counterfeit coin of the United States held constitutional. The power to coin money being given to Congress, it must carry with it the correlative power of protecting the creature and object of that power.

U. S. *v.* Marigold, 9 How. 566.
Baender *v.* Barnett, 255 U. S. 224.

The term "securities" includes Treasury notes and notes of a United States bank, and the power to punish counterfeiting of securities extends to securities issued by foreign countries or under their authority.

U. S. *v.* Howell, 11 Wall. 437.
U. S. *v.* Turner, 7 Pet. 136.
U. S. *v.* Arjona, 120 U. S. 479.
Legal Tender Cases, 12 Wall. 535.

Congress may provide punishment for counterfeiting foreign coins made current by United States laws, but the coin counterfeited must have been included in the act of Congress. The offenses of counterfeiting coins and of passing counterfeit money are essentially different, the former being an offense against the Government by which individuals may be affected and the latter a private wrong by which the Government may be remotely reached, if at all.

U. S. *v.* Gardner, 10 Pet. 618.
Ex parte Wilson, 114 U. S. 423.

Powers of the States

The distinction drawn between counterfeiting coin and passing counterfeit coin is the ground for the holding that the power of Congress to punish persons who pass counterfeit money is not exclusive. State courts have asserted the authority of the States to punish counterfeiting.

Fox *v.* Ohio, 5 How. 433.
U. S. *v.* Marigold, 9 How. 560.

The same act of counterfeiting may be punishable under the laws of the States as well as of the United States.

Sexton *v.* California, 189 U. S. 319.

Offense Against the United States and the State

If one passes counterfeited coin of the United States within a State, it may be an offense against the United States and the State; the United States because it discredits the coin, and the State because of the fraud upon him to whom it is passed.

U. S. *v.* Cruikshank, 92 U. S. 550.

Interpretation of the Decision in Fox v. Ohio

In U. S. *v.* Yates (6 Fed. 861) the court said:

I do not see how the question under consideration must not be considered as disposed of by the decision of the Supreme Court of the United States in the case of Fox *v.* Ohio (5 How. 410), where the power of a State to punish the act of passing counterfeit coin of the United States with intent to defraud was called in question and upheld upon the ground that it was a mere cheat. It will not be pretended, I think, that any act such as the act of passing counterfeit coin is described to be by the Supreme Court in the case of Fox *v.* Ohio was by the common law deemed

to be an infamous crime. The effect of the decision * * * is in no wise modified by the subsequent decision of the same court in U. S. *v.* Marigold (9 How. 560), where the power of the United States to punish the act of passing counterfeit coin of the United States was upheld upon the ground that the court traced "both the offense and the authority to punish it to the power given by the Constitution to coin money, and to the correspondent and necessary power and obligation to protect and to preserve in its purity this constitutional currency for the benefit of the Nation," for in U. S. *v.* Marigold the court is careful to reaffirm, in express terms, all the doctrines declared in Fox *v.* Ohio.

But see Ex parte Houghton, 8 Fed. 897.

As to the power of Congress to punish the offense of counterfeiting foreign securities, see Article I, section 8, clause 10.

Clause 7.—POST OFFICES.

The Congress shall have power . . . To establish Post Offices and post Roads.

Power of Congress

In General

When the power to establish post offices and post roads was surrendered to the Congress it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective. It is not necessary that Congress should have power to deal with crime or immorality within the States in order to maintain that it possesses the power to forbid the use of the mails in aid of the perpetration of crime or immorality.

In re Rapier, 143 U. S. 110.

The rule that in the enforcement of provisions guaranteeing civil rights Congress is limited to the enactment of legislation corrective of any wrong committed by the States and not by the individuals does not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such powers to the States, as in the regulation of commerce, the coining of money, the establishment of post offices and post roads, the declaring of war, etc. In these cases Congress has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof.

Civil Rights Cases, 109 U. S. 18.

The power vested in Congress has been practically construed, since the foundation of the Government, to authorize not merely the designation of the routes over which the mail shall be carried and the offices where letters and other documents shall be received to be distributed or forwarded but the carriage of the

mail and all measures necessary to secure its safe and speedy transit and its prompt delivery.

Ex parte Jackson, 96 U. S. 732.

As to the power of Congress to make appropriations to open up and maintain a line of communication through the States over which the mails can be transported, see Searight *v.* Stokes (3 How. 166).

This power, having been exercised by the Federal Government, is exclusive of the power of the several States to establish any postal system, and has been by law made a monopoly excluding all private individuals from establishing competing systems in the United States.

Hoover *v.* McChesney, 81 Fed. 477.

To Construct National Highways

Congress, under the power to provide for postal accommodations, has authority to grant franchises authorizing corporations to construct national highways and bridges from State to State.

California *v.* Central Pac. R. Co., 127 U. S. 39.
But see—
Pennsylvania *v.* Wheeling, etc., Brdg. Co., 18 How. 421.
Luxton *v.* North River Brdg. Co., 153 U. S. 529.

Right of Way for Telegraph Lines

Act of Congress of July 24, 1866, authorizing the erection and operation of interstate telegraph lines, held to be a regulation of commercial intercourse among the States and appropriate legislation to carry into execution the powers of Congress over the Postal Service.

Pensacola Tel. Co. *v.* Western Union, 96 U. S. 11.
Leloup *v.* Mobile, 127 U. S. 646.

Post-Office Sites

The power to establish post offices includes authority to obtain sites therefor by condemnation proceedings.

Kohl *v.* U. S., 91 U. S. 367.

Power to Determine What May Be Carried in the Mail

In Public Clearing House *v.* Coyne, 194 U. S. 511, the court said:

> The power to refuse the facilities of the department to the transmission of such (objectionable) letter attends it at every step from its first deposit in the mail to its final delivery to the addressee, and as the character of the letter can not be ascertained until it arrives at the office of delivery the Government may then act and refuse to consummate the transaction.

The right of the Postmaster General to exclude letters, or to refuse to permit their delivery to persons addressed, must depend upon some law of Congress, and if no such law exists then he can not exclude or refuse to deliver them.

School of Magnetic Healing *v.* McAnnulty, 187 U. S 109.

Lotteries or Fraudulent Schemes

Act of Congress providing that "no letter or circular concerning lotteries, so-called gift concerts, or other similar enterprises offering prizes, or concerning schemes devised and intended to deceive and defraud the public, for the purpose of obtaining money under false pretenses, shall be carried in the mail," held constitutional.

Ex parte Jackson, 96 U. S. 728.

See also—

Horner *v.* U. S., 143 U. S. 207; 570.

In re Rapier, 143 U. S. 110.

Newspapers and Periodicals

Congress, in the interest of the dissemination of current intelligence, may so legislate as to the mails, by classification or otherwise, as to favor the widespread circulation of newspapers, periodicals, etc., even though the legislation on that subject, when considered intrinsically, discriminates against the public and in favor of such publications and their publishers. Congress may refuse the mails to seditious publications.

Lewis Pub. Co. *v.* Morgan, 229 U. S. 288.

Milwaukee Pub. Co. *v.* Burleson, 255 U. S. 407.

A statute under which an indictment is framed, charging the offense of mailing a newspaper containing an advertisement of a State lottery, is within the constitutional power of Congress under this provision.

In re Rapier, 143 U. S. 132.

Section 215 of the Federal Criminal Code, prohibiting the placing of letters in the mail for the purpose of executing a scheme to defraud, is within the power of Congress even as applied to what may be a mere incident of a fraudulent scheme that itself is outside the jurisdiction of Congress.

Badders *v.* U. S., 240 U. S. 391.

Inspection of Sealed Packages as Violating the Fourth Amendment

No law of Congress can place in the hands of officials connected with the Postal Service any authority to invade the secrecy of letters and such sealed packages in the mail, and all regulations adopted as to mail matter of this kind must be in subordination to the great principle embodied in the fourth amendment of the Constitution.

Ex parte Jackson, 96 U. S. 733.

Power to Prevent Obstruction of the Mail

The relations of the General Government to the transportation of the mails is such as to authorize a direct interference to prevent a forcible obstruction, and while it may be competent for the Government through the executive branch forcibly to remove all such obstructions, it is equally within its competency to appeal to the civil courts for an inquiry and deter-

mination as to the existence and character of any alleged obstructions, and if such are found to exist or threaten to occur, to invoke the powers of those courts to remove or restrain such obstructions.

In re Debs, 158 U. S. 599.

Felonious Entry of Post Office

The object of section 5478, Revised Statutes, providing that "any person who shall forcibly break into or attempt to break into any post office, or any building used in whole or in part as a post office, with intent to commit therein larceny or other depredation," etc., is to protect the Postal Service of the United States and to secure buildings used for such purposes from felonious entry with the criminal intent defined in the statute. It is this feature of the crime which gives the Federal Government the right to punish such offenses under the powers granted by the Constitution.

Considine *v.* U. S., 112 Fed. 342.

See also—

Legal Tender Cases, 12 Wall. 537.

Tampering With Mail Before Manual Delivery

It is within the power of Congress to make it a criminal offense for anyone to open a letter after it has passed from the actual control of the post-office officials and agents and before manual delivery to the person to whom it was directed.

U. S. *v.* McCready, 11 Fed. 225.

Delegation of Power to Postmaster General

The ordinary rule of construction of Government powers would have led to the conclusion that Congress, being charged with the duty of establishing post offices and post roads, could not delegate such duty to a branch of the executive department of the Government, but the policy of the Government from the time the general post office was established has been to delegate the power, to designate the places where the mails shall be received and delivered, to the Postmaster General.

Ware *v.* U. S., 4 Wall. 632.

U. S. *v.* Barlow, 132 U. S. 271.

Johnson *v.* Maryland, 254 U. S. 51.

See also—

Hunt *v.* U. S., 257 U. S. 125, as to mail-carriage contracts.

Powers of the States

Robbing the Mail

The offense of robbing the mail on the highway is cognizable as highway robbery under State laws, although made punishable under those of the United States.

Houston *v.* Moore, 5 Wheat. 34.

U. S. *v.* Kirby, 7 Wall. 485.

Liability of Railroad for Injury to Postal Clerk

State statute making a railroad company liable for injury to a railway postal clerk as if he were an employee of the railroad and not as a passenger does not conflict with the power of Congress to establish post offices and post roads.

Martin *v.* Pittsburgh, etc., R. Co., 203 U. S. 284.
Price *v.* Pennsylvania R. Co., 113 U. S. 221.

Mail Trains

Statute providing that all regular passenger trains shall stop at stations, etc., and requiring a fast mail train to turn aside from the direct interstate route and run to the station in Cairo and back again in order to receive and discharge passengers at that station is an unconstitutional obstruction of the mails.

Illinois Cent. R. Co. *v.* Illinois, 163 U. S. 142.

Act requiring every regular passenger train running wholly within the State to stop at county seats to take on and discharge passengers is not an unconstitutional interference with the transportation of the mails.

Gladson *v.* Minnesota, 166 U. S. 427.

International Bridge

Facts that bridge when built, as a railroad bridge only, was devoted wholly to international commerce and that act of 1874 declared it a lawful structure and established post route, did not supplant authority of State to require addition of foot and carriage ways.

International Brdg. Co. *v.* New York, 254 U. S. 126.

Clause 8.—COPYRIGHTS AND PATENTS.

The Congress shall have power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Copyright and Patent Right

In General

No authority exists for obtaining a copyright beyond the extent to which Congress has authorized it. A copyright can not be sustained as a right existing at common law; but, as it exists in the United States, it depends wholly on the legislation of Congress.

Banks *v.* Manchester, 128 U. S. 252.
See also—
Bobbs-Merrill Co. *v.* Straus, 210 U. S. 339.
Stevens *v.* Gladding, 17 How. 451.
Holmes *v.* Hurst, 174 U. S. 85.
American Tob. Co. *v.* Werckmeister, 207 U. S. 284.
Wheaton *v.* Peters, 8 Pet. 591.

As Applied to Moving-Picture Dramatizations

The copyright act of Congress (Rev. Stat., sec. 4952, as amended), giving to authors the exclusive right to dramatize

any of their works, is valid as applied to pantomime dramatization by means of moving-picture films.

Kalem Co. *v.* Harper Bros., 222 U. S. 55.

The public presentation of a dramatic composition, not printed and published, does not deprive the owner of his common-law right, except by the operation of statute. At common law, the public performance of the play is not an abandonment of it to the public use.

Ferris *v.* Frohman, 223 U. S. 424.

Extent of Power

The power granted to Congress by this clause "is domestic in its character and necessarily confined within the limits of the United States."

Brown *v.* Duchesne, 19 How. 195.

The law as amended in 1891 permits foreign authors to secure a copyright in the United States when the government of the country of which they are citizens grants the benefit of copyright to citizens of the United States on substantially the same basis as to its own citizens. In the case of foreign books printed in the English language, however, the type must be set in the United States.

Modern American Law, Vol. XI, p. 156.
See also—
Stevens *v.* Gladding, 17 How. 451.
Ager *v.* Murray, 105 U. S. 130.
Shaw *v.* Cooper, 7 Pet. 319.
Banks *v.* Manchester, 128 U. S. 252.

The power to protect writings and inventions refers to fruits of intellectual labor and does not extend to the protection of trade-marks. It is for Congress to determine for what time and under what circumstances protection shall be granted. While rights are to be secured for but a limited time, Congress may extend the term upon the expiration of the time originally specified and in doing so protect the rights of purchasers and assignees, and this may be done by special act. Congress may modify rights under an existing patent, provided vested property rights are not thereby impaired.

Trade-mark Cases, 100 U. S. 94.
Higgins *v.* Keuffel, 140 U. S. 431.
Evans *v.* Jordan, 9 Cranch 199.
Bloomer *v.* McQuewan, 14 How. 549.
Bloomer *v.* Millinger, 1 Wall. 350.
Eunson *v.* Dodge, 18 Wall. 416.
McClurg *v.* Kingsland, 1 How. 206.

The language of the clause limits Congress to the protection of "useful" inventions. "Invention" implies originality, novelty, the finding out, contriving or creating something which did not exist before. The utility of a device can not entitle one to a patent; however useful it may be, if not new it is not patent-

able. An invention must be the product of the inventor's mind and not the result of mere mechanical skill; but a mental conception not reduced to definite physical representation is not an invention.

Seymour *v.* Osborne, 11 Wall. 549.
O'Reilly *v.* Morse, 15 How. 119.
Pennock *v.* Dialogue, 2 Pet. 20.
Le Roy *v.* Tatham, 14 How. 177.
Aron *v.* Manhattan Ry., 132 U. S. 90.
Busell Trimmer Co. *v.* Stevens, 137 U. S. 433.
Magin *v.* Karle, 150 U. S. 392.
Rubber-Tip Pencil Co. *v.* Howard, 20 Wall. 507.
Phillips *v.* Detroit, 111 U. S. 608.
Smith *v.* Nichols, 21 Wall. 118.
Packing Company Cases, 105 U. S. 572.
Collar Co. *v.* Van Dusen, 23 Wall. 563.
Reckendorfer *v.* Faber, 92 U. S. 356.
King *v.* Gallun, 109 U. S. 101.
Weir *v.* Morden, 125 U. S. 108.
Potts *v.* Creager, 155 U. S. 608.
Clark Thread Co. *v.* Willimantic Linen Co., 140 U. S. 489.
Wicke *v.* Ostrum, 103 U. S. 469.
The Tremolo Patent, 23 Wall. 518.
Hildreth v. Mastoras, 257 U. S. 27.

The law authorizing the grant of patents for designs was intended to encourage the decorative arts and contemplated appearance rather than utility; but utility is an element for consideration in determining the validity of such a patent. Patents for designs, like other patents, must show originality and inventive faculty.

Gorham Co. *v.* White, 14 Wall. 524.
Smith *v.* Whitman Co., 148 U. S. 678.
Eclipse Mfg. Co. *v.* Holland, 62 Fed. 465.

Distinction Between Copyright and Letters Patent

The description of an art in a book, though entitled to the benefit of copyright, lays no foundation for an exclusive claim to the art itself. The object of the one is explanation; the object of the other is use. The former may be secured by copyright. The latter can only be secured, if it can be secured at all, by letters patent.

Baker *v.* Selden, 101 U. S. 105.

Right of Government to Use a Patent

Letters patent for a new invention or discovery in the arts confer upon the patentee an exclusive property in the patented invention which can not be appropriated or used by the Government itself without just compensation any more than it can appropriate or use without compensation land which has been patented to a private purchaser.

James *v.* Campbell, 104 U. S. 358.
See also—
U. S. *v.* Palmer, 128 U. S. 271.
Hollister *v.* Benedict, etc., Mfg. Co., 113 U. S. 67.

Cammeyer *v.* Newton, 94 U. S. 234.
U. S. *v.* Burns, 12 Wall. 252.
Belknap *v.* Schild, 161 U. S. 16.

Exclusive Power of Congress

No State can limit, control, or exercise the power given by this clause.

Woollen *v.* Banker, 2 Flipp. (U. S.) 33.

From this grant of power it does not follow that Congress may, from time to time, as often as they think proper, authorize an inventor to recall rights which he had granted to others or reinvest in him rights of property which he had before conveyed for a valuable and fair consideration.

Bloomer *v.* McQuewan, 14 How. 549.

The Constitution and acts of Congress relating to patents are alone the sources governing the rights and remedies of patentees.

U. S. *v.* American Bell Tel. Co., 32 Fed. 591, reversed in 128 U. S. 315.

Appeals from Commissioner of Patents

Act of Congress conferring the right of appeal to the Court of Appeals of the District of Columbia from the decisions of the Commissioner of Patents is not unconstitutional as conferring executive power upon a judicial body.

U. S. *v.* Duell, 172 U. S. 576.

To Promote the Progress of Science and Useful Arts

This power is given not generally but only as a means to this particular end; hence it expressly appears that Congress is not empowered by the Constitution to pass laws for the protection or benefit of authors and inventors except as a means to "promote science and useful arts."

Martinetti *v.* Maguire, 1 Deady, 216.
See also—
Higgins *v.* Keuffel, 140 U. S. 431.
Bleistein *v.* Donaldson Lith. Co., 188 U. S. 249.
Kendall *v.* Winsor, 21 How. 328.

Specifications are to be construed liberally, in accordance with the design of the Constitution and the patent laws of the United States, to promote the progress of the useful arts and allow inventors to retain to their own use not anything which is matter of common right but what they themselves have created.

Winans *v.* Denmead, 15 How. 341.
Grant *v.* Raymond, 6 Pet. 240.

One who is employed and paid by another to develop a process and machinery for manufacturing a specified product, and who patents an invention made by him in the course of the employment, holds the patent for his employer.

Standard Parts Co. *v.* Peck, 264 U. S. 52.

The rule that a reissue patent, expanding the patentee's original claims, will be invalidated by a delay of two years in applying for it unless special circumstances be proven justifying

a longer delay, is applicable also to patents issued on divisional applications. Chapman *v.* Wintroath, 252 U. S. 126, explained.

Webster Co. *v.* Splitdorf Co., 264 U. S., 463.

For Limited Times

This clause contemplates that the exclusive right of authors and inventors to their respective writings and discoveries shall exist for a limited period, and that the period shall be subject to the discretion of Congress.

Pennock *v.* Dialogue, 2 Pet. 16.
Evans *v.* Eaton, 3 Wheat. 454.

To Authors and Inventors

The legislation based on this provision regards the right of property in the inventor as the medium of the public advantage derived from his invention, so that in every grant of the limited monopoly two interests are involved—that of the public, who are the grantors, and that of the patentee. There are thus two parties to every application for a patent, and more, when as in the case of interfering claims or patents, other private interests compete for preference.

Burrow-Giles Litho. Co. *v.* Sarony, 111 U. S. 53.
Butterworth *v.* Hoe, 112 U. S. 50.

Powers of States

State laws regulating the execution and transfer of notes given for a patent right and requiring that the words "given for a patent right" shall be written or printed on the face of such note are not unconstitutional.

Allen v. Riley, 203 U. S. 347.
Woods *v.* Carl, 203 U. S. 358.

The use of a patent is subject to the police regulations of a State, and a State may prescribe reasonable regulations for the transfer of patent rights so as to protect its citizens from fraud in the absence of congressional legislation.

Webber *v.* Virginia, 103 U. S. 347.
Ozan Lbr. Co. *v.* Union County Bank, 207 U. S. 255.
Patterson *v.* Kentucky, 97 U. S. 503.

Trade-Marks

Legislation respecting trade-marks is not authorized by this clause. The ordinary trade-mark has no necessary relation to invention or discovery, nor can it be classified under the head of writings. While the word "writings" may be liberally construed, as it has been, to include original designs for engravings, prints, etc., it is only such as are original and are founded in the creative powers of the mind. The writings which are to be protected are the fruits of intellectual labor, embodied in the form of books, prints, engravings, and the like. The trade-mark may be, and generally is, the adoption of something already in existence as the distinctive symbol of the party using it. At common law the exclusive right to it grows out of its use and not its mere adoption.

In Trade-mark Cases (100 U. S. 82) the Supreme Court decided that the act of 1870 was beyond the power of Congress. It suggested in the opinion that under the commerce clause perhaps Congress had the power to legislate with reference to trade-marks. Immediately thereafter the act of 1881 was passed by Congress, providing for the registering of trade-marks.

U. S. *v.* Koch, 40 Fed. 250.
See also—
Leschen Rope Co. *v.* Broderick, 201 U. S. 166.
Columbia Mill Co. *v.* Alcorn, 150 U. S. 463.
Elgin Nat. Watch Co. *v.* Illinois Watch Co., 179 U. S. 677.
Liggett, etc., Tob. Co. *v.* Finzer, 128 U. S. 182.
Corbin *v.* Gould, 133 U. S. 308.
Ryder *v.* Holt, 128 U. S. 525.
Warner *v.* Searle & Hereth Co., 191 U. S. 195.
Higgins *v.* Keuffel, 140 U. S. 428.
Prestonettes *v.* Coty, 264 U. S. 359.

Clause 9.—INFERIOR COURTS.[1]

The Congress shall have power . . . To constitute tribunals inferior to the Supreme Court.

Power and Duty of Congress

Under this clause Congress may establish such inferior courts as it sees fit. The creation of such courts by Congress does not *ipso facto* invest them with the judicial power delegated by the Constitution; legislation is necessary to give them judicial power, and the distribution of this power is entirely within the control of Congress except in the cases especially enumerated in the Constitution. But the whole judicial power of the United States should at all times be vested in some courts created by Congress.

Stuart *v.* Laird, 1 Cranch 309.
Martin *v.* Hunter. 1 Wheat. 331.
Turner *v.* Bank of North America, 4 Dall. 10.
Sheldon *v.* Sill, 8 How. 449.
Case of the Sewing Machine Cos., 18 Wall. 557.
McClung *v.* Silliman, 6 Wheat. 604.
In re Barry, 136 U. S. 609, note.
Fontain *v.* Ravenel, 17 How. 384.
Johnson Co. *v.* Wharton, 152 U. S. 260.

Jurisdiction may be conferred in all cases involving questions to which the Constitution extends judicial power, although other questions may be involved therein, and in some instances jurisdiction may be withdrawn even in pending cases. It rests entirely with Congress to determine at what time and under what conditions the power may be invoked. State courts are not inferior courts within the meaning of this clause; the courts contemplated are those only which exist under the Constitution and laws of the United States.

Osborne *v.* U. S. Bank, 9 Wheat. 823.
Ex parte Yerger, 8 Wall. 104.
In re Hall, 167 U. S. 42.
Gaines *v.* Fuentes, 92 U. S. 18.

[1] See also Art. III, sec. 1, p. 405.

Ex parte Bollman, 4 Cranch 97.
Houston *v.* Moore, 5 Wheat. 27.

The necessity for legislation to confer jurisdiction applies to criminal cases; the Federal courts have no common-law jurisdiction of offenses. The power to establish courts and invest them with jurisdiction affords no pretext for the abrogation of established rules of property; hence, the decision of the supreme court of a State, as a rule of property, is binding on the Federal courts.

Ex parte Bollman, 4 Cranch 93.
U. S. *v.* Wiltberger, 5 Wheat. 98.
Jones *v.* U. S., 137 U. S. 211.
Manchester *v.* Massachusetts, 139 U. S. 262.
Suydam *v.* Williamson, 24 How. 433.
St. John *v.* Chew, 12 Wheat. 162.
Henderson *v.* Griffin, 5 Pet. 155.
Van Rensselaer *v.* Kearney, 11 How. 318.
Beauregard *v.* New Orleans, 18 How. 502.
Barrett *v.* Holmes, 102 U. S. 655.
Forsyth *v.* Hammond, 166 U. S. 519.

Federal and State courts are distinct and independent of each other in matters within their respective jurisdictions. State laws can not confer jurisdiction upon Federal courts or in any way affect the jurisdiction conferred by Congress. Forms of action and modes of proceeding in Federal courts are matters for regulation by Congress, and when Congress has prescribed definite rules in matters of practice they are, to that extent, exclusive of State legislation upon the same matter.

Taylor *v.* Carryl, 20 How. 597.
Steamboat *Orleans*, 11 Pet. 184.
Insurance Co. *v.* Morse, 20 Wall. 453.
Southern Pac. Co. *v.* Denton, 146 U. S. 209.
U. S. *v.* Peters, 5 Cranch 138.
Beers *v.* Haughton, 9 Pet. 359.
Toland *v.* Sprague, 12 Pet. 330.
Chicot County *v.* Sherwood, 148 U. S. 534.
Keary *v.* Farmers', etc., Bank, 16 Pet. 94.

All Jurisdiction Must Be Vested

Congress is bound to create some inferior courts in which to vest all that jurisdiction which, under the Constitution, is exclusively vested in the United States and of which the Supreme Court can not take original cognizance. It might establish one or more inferior courts, and might parcel out the jurisdiction among such courts from time to time at their own pleasure. But the whole judicial power of the United States should be at all times vested either in an original or appellate form in some courts created under its authority.

Martin *v.* Hunter, 1 Wheat. 331.
Johnson *v.* Gordon, 4 Cal. 368.

Power to create such courts within States includes authority to obtain sites for courthouses by condemnation proceedings.

Kohl *v.* U. S., 91 U. S. 367.
Downes *v.* Bidwell, 182 U. S. 287.

Under this and clauses 11, 12, and 14 Congress is authorized to create military tribunals and to confer upon them, as has been done by Articles of War 8, 9, 10, and 12, jurisdiction to try military offenses to the exclusion of the civil tribunals.

Ex parte Foley, 243 Fed. 470.

Clause 10.—PIRACIES AND FELONIES.

The Congress shall have power . . . To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.

Definition

To define is to enumerate the crimes which shall constitute piracy; but while Congress is given power to define piracy, it need not do so in terms; reference to the laws of nations for a definition is sufficient. The act of Congress of April 30, 1890, gives to Federal courts power to punish the offense of murder and robbery committed on board a foreign vessel by a citizen of the United States; on board a United States vessel by a foreigner; or by a citizen or foreigner on board a piratical vessel.

U. S. *v.* Smith, 5 Wheat. 158.
U. S. *v.* Pirates, 5 Wheat. 192.
Crapo *v.* Kelly, 16 Wall. 629.
U. S. *v.* Holmes, 5 Wheat. 417.
U. S. *v.* Klintock, 5 Wheat. 151.
The *Marianna Flora*, 11 Wheat. 40.

Actual plunder is not necessary; any molestation of third parties by insurgent vessels before the recognition of belligerency constitutes piracy. Slave trade, not being contrary to the law of nations, is not piracy; but, on the other hand, native Africans unlawfully kidnapped can not be deemed pirates if they take possession of the vessel to regain their liberty.

U. S. *v.* The *Malek Adhel*, 2 How. 232.
The *Antelope*, 10 Wheat. 121.
The *Amistad*, 15 Pet. 593.

High Seas

According to the decisions of the English common-law courts, "high seas" means that portion of the sea which washes the open coast. A vessel lying in an open roadstead of a foreign country is upon the high seas.

Waring *v.* Clarke, 5 How. 453.
U. S. *v.* Pirates, 5 Wheat. 200.
U. S. *v.* Wiltberger, 5 Wheat. 104.
In U. S. *v.* Rodgers, 150 U. S. 259, the term "high seas" was extended to include the Great Lakes.

Murder by a Foreigner on a Foreign Ship

Murder committed at sea on board a foreign vessel is not punishable by the laws of the United States if committed by a foreigner upon a foreigner, but otherwise as to piracy, for that

is a crime within the acknowledged reach of the punishing power of Congress.

U. S. *v.* Pirates, 5 Wheat. 198.
U. S. *v.* Palmer, 3 Wheat. 630.

Counterfeiting Foreign Money

The laws of nations require every national government to use "due diligence" to prevent a wrong being done within its own dominion to another nation with which it is at peace, or to the people thereof; and because of this the obligation of one nation to punish those who within its own jurisdiction counterfeit the money of another nation has long been recognized.

U. S. *v.* Arjona, 120 U. S. 484.
U. S. *v.* White, 27 Fed. 200.

Clause 11.—THE WAR POWER.

The Congress shall have power . . . To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.

What Constitutes War

War is the external contention by force between some of the members of two nations, authorized by the legitimate powers; it is that state in which a nation prosecutes its right by force. It may be general or limited and may exist where one belligerent claims sovereign rights against the other; so where insurrection becomes by numbers and power organized rebellion, it is civil war, in which both parties are conceded belligerent rights. The War of the Rebellion was conducted as if it were with a foreign enemy, and important rights were conceded to the insurgent States, and international rights were conceded to questions arising out of that war. The relations between the United States and France in 1800 constituted limited hostilities, amounting to a state of war.

The *Eliza*, 4 Dall. 40.
Prize Cases, 2 Black 666.
Miller *v.* U. S., 11 Wall. 306.
Coppell *v.* Hall, 7 Wall. 554.
Ford *v.* Surget, 97 U. S. 604.
The *Amelia*, 1 Cranch 33.

Declaration of War

A formal declaration is unnecessary; a recognition of a state of war by engaging in acts of hostility is sufficient. The President has power to thus recognize the existence of a state of war. Such was the effect of the President's blockade proclamation of April 19, 1861, and the act of Congress of July 13, 1861; in fact, the President's proclamations marked the beginning of the War of the Rebellion. Acts of one nation may be deemed by another to be tantamount to a declaration of war in advance of any formal action by either.

The *Eliza*, 4 Dall. 39.
The *Panama*, 176 U. S. 535.

Matthews *v.* McStea, 91 U. S. 12.
The *William Bagaley*, 5 Wall. 406.
Levy *v.* Stewart, 11 Wall. 253.
The *Protector*, 12 Wall. 702.
The *Pedro*, 175 U. S. 354.

Powers of Congress

In General

Congress alone has power formally to declare war, but where the President finds an actual state of war existing he may take the necessary steps in the absence of congressional action. The power was conferred upon Congress, not for purposes of aggression or aggrandizement, but to enable the General Government to vindicate its own rights and those of its citizens, and it can never be presumed that a war declared by Congress is waged for purposes of conquest or the acquisition of territory, although the power carries with it the power to acquire territory by conquest. It includes the authority to use other means besides those indicated by the terms of the grant and contemplates all means and any manner in which war may be legitimately prosecuted. All acts tending to lessen an adversary's strength are lawful.

Prize Cases, 2 Black 668.
The *Panama*, 176 U. S. 535.
Fleming *v.* Page, 9 How. 614.
U. S. *v.* Castillero, 2 Black 355.
American Ins. Co. *v.* Canter, 1 Pet. 542.
Stewart *v.* Kahn, 11 Wall. 507.
Sere *v.* Pitot, 6 Cranch 332.
Young *v.* U. S., 97 U. S. 60.
Ford *v.* Surget, 97 U. S. 605.
Civil Rights Cases, 109 U. S. 18.

The confiscation of enemies' property may be provided for by Congress, but a declaration of war does not, *ipso facto*, work a confiscation of such property; positive law authorizing it is necessary, and the power to pass such a law is exclusively in Congress. The act of Congress emancipating the slaves of those aiding in rebellion was valid under this power.

Miller *v.* U. S., 11 Wall. 305.
Tyler *v.* Defrees, 11 Wall. 345
Mrs. Alexander's Cotton, 2 Wall. 419.
Brown *v.* U. S., 8 Cranch 123.
Conrad *v.* Waples, 96 U. S. 284.
Briggs *v.* U. S., 143 U. S. 356.

For a discussion of the emancipation proclamation see—

Jacoway *v.* Denton, 25 Ark. 629.

The authority conferred by this clause extends to all legislation necessary to the prosecution of the war with vigor and success. It is not limited to operations in the field and the dispersion of the enemy, but carries with it the power to prosecute war to a termination and to guard against its renewal.

Ex parte Milligan, 4 Wall. 139.
Legal Tender Cases, 12 Wall. 457.
Stewart *v.* Kahn, 11 Wall. 507.
White *v.* Hart, 13 Wall. 646.
Raymond *v.* Thomas, 91 U. S. 715.

For the successful prosecution of war Congress may call the requisite forces into service and provide for the transportation of troops through all parts of the Union; may prohibit intercourse; may relax the ordinary rules of war by permitting a limited commercial intercourse with the enemy upon such conditions as it sees fit. So, also, Congress may suspend statutes of limitation during the existence of a rebellion.

Selective Draft Law Cases, 245 U. S. 366.
Cox *v.* Wood, 247 U. S. 3.
Kneedler *v.* Lane, 45 Pa. 238.
Crandall *v.* Nevada, 6 Wall. 35.
Matthews *v.* McStea, 91 U. S. 13.
Hamilton *v.* Dillin, 21 Wall. 97.
Mayfield *v.* Richards, 115 U. S. 142.

Power to Repel Invasions and Declare War Against a State

By the Constitution Congress alone has the power to declare a national or foreign war. It can not declare war against a State or any number of States by virtue of any clause in the Constitution. The Constitution confers on the President the whole executive power. He is bound to take care that the laws be faithfully executed. He is Commander in Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States.

Prize Cases, 2 Black 668.

The confiscation acts of Congress of 1861 and 1862 were held to be constitutional. The power to declare war involves the power to prosecute it by all means and in any manner by which war may be legitimately prosecuted. It therefore includes the right to seize and confiscate all property of an enemy and to dispose of it at the will of the captor. This is and always has been an undoubted belligerent right, and in the Civil War the United States was vested with belligerent rights in addition to the sovereign power it previously held.

Miller *v.* U. S., 11 Wall. 304.
Tyler *v.* Defrees, 11 Wall. 344.
Kirk *v.* Lynd, 106 U. S. 315.

In the absence of an act of Congress there is no right to prize in property captured by vessels of the United States.

The *Siren*, 13 Wall. 392.
The *Hampton*, 5 Wall. 376.

Limitation of Actions

The act of Congress of June 11, 1864, providing that "after such action—civil or criminal—shall have accrued, such person can not, by reason of such resistance of the laws or such interruption of judicial proceedings, be served with process for the commencement of the action, the time during which such person shall be beyond the reach of judicial process shall not be deemed or taken as any part of the time limited by law for the commencement of such action," was held constitutional as necessarily implied from the powers to make war and suppress insurrections.

Stewart *v.* Kahn, 11 Wall. 494.
Mayfield *v.* Richards, 115 U. S. 137.

Federal Operation of Railroads [1]

The Federal control act of March 21, 1918, giving the President and the Interstate Commerce Commission full possession and control of the transportation systems of the country, was a proper exercise of the war power under this clause.

Northern Pac. R. Co. *v.* North Dakota, 250 U. S. 135.

An action by the Director General of Railroads, in a State court, to recover for damage done to a railroad wharf while it was under Federal control, is not subject to the State statute of limitations. Dupont De Nemours & Co. *v.* Davis, 264 U. S. 456.

Davis *v.* Corona Coal Co., 265 U. S. 219.

Emergency Fleet Corporation

A conspiracy to defraud the United States in any manner, as denounced by section 37 of the Criminal Code, includes a conspiracy to defraud the Fleet Corporation, which if successful would result directly in pecuniary loss to the United States and impair the efficiency of the corporation as a governmental instrumentality.

U. S. *v.* Walter, 263 U. S. 15.

Federal Food Control

The mere existence of a state of war did not suspend the guaranties of the fifth and sixth amendments nor relieve Congress from their limitations in connection with the food control act of August 10, 1917.

U. S. *v.* Cohen Grocery Co., 255 U. S. 81.

See also—

U. S. *v.* Standard Brewery, 251 U. S. 210, as to use of grains, fruits, and other food products in connection with beverages.

In Addy Co. *v.* U. S., 264 U. S. 239, the question was raised whether Congress, when enacting the Lever Act (August 10, 1917), could constitutionally have fixed prices at which persons then owning coal might sell it without providing compensation for losses, and it was held that the President's order issued under the act must be construed, as criminal statutes are, strictly, and without retroactive effect, and that a construction which raises a grave constitutional question should be avoided.

Espionage Act

For an interpretation and application of the espionage act of June 15, 1917, and its relation to the guaranties of the first amendment, see—

Abrams *v.* U. S., 250 U. S. 616.
Frohwerk *v.* U. S., 249 U. S. 204.
Schench *v.* U. S., 249 U. S. 47.
Debs *v.* U. S., 249 U. S. 11.
Sugarman *v.* U. S., 249 U. S. 182.

War Risk Insurance Act

Decision of administrative officer within conferred powers is not subject to review by the courts.

Silberschein *v.* U. S., 285 Fed. 397.

[1] See also "Exclusive Powers of Congress over Commerce," p. 92.

War-Time Prohibition

The implied war power of Congress over intoxicating liquors extends to the enactment of laws which will not merely prohibit the sale of intoxicating liquors but will effectually prevent their sale. Thus Congress, in the exercise of the war power, could, in order to make effective the existing war-time prohibition against the manufacture and sale of intoxicating liquors, enact the provisions of the Volstead Act of October 28, 1919, extending such prohibition to malt liquors, whether in fact intoxicating or not, with alcoholic content of as much as one-half of 1 per cent of alcohol by volume.

Hamilton *v.* Kentucky Distilleries Co., 251 U. S. 146.
Ruppert *v.* Caffey, 251 U. S. 264.

State Legislation

Law prohibiting teaching of citizens not to aid United States in prosecuting war sustained.

Gilbert *v.* Minnesota, 254 U. S. 325.

In Crandall *v.* Nevada (6 Wall. 44), involving a State tax on persons leaving the State, the court said:

> The Federal power has a right to declare and prosecute wars, and, as a necessary incident, to raise and transport troops through and over the territory of any State of the Union. If this right is dependent in any sense, however limited, upon the pleasure of a State, the Government itself may be overthrown by an obstruction to its exercise. Much the largest part of the transportation of troops during the late rebellion was by railroads, and largely through States whose people were hostile to the Union. If the tax levied by Nevada on railroad passengers had been the law of Tennessee, enlarged to meet the wishes of her people, the Treasury of the United States could not have paid the tax necessary to enable its armies to pass through her territory.

Letters of Marque

Until Congress passes laws upon the subject of war and reprisals, no private citizen can enforce such rights; and letters are strictly limited by the law under which they are issued and the instructions of the Executive. Letters obtained by fraud are inoperative. Congress may commission privateers to make captures within United States waters as well as upon the high seas.

Brown *v.* U. S., 8 Cranch 110.
The *Thomas Gibbons*, 8 Cranch 428.
The *Experiment*, 8 Wheat. 264.
The *Joseph*, 8 Cranch 455.

Rules Concerning Captures

The power to make these rules is not limited to captures on the high seas or on foreign territory; it extends to captures within the United States. It is for Congress to determine what shall be subject to capture. The power of Congress in respect to prizes is plenary, and no one can have any interest in prizes captured except by permission of Congress.

Brown *v.* U. S., 8 Cranch 110.
Lamar *v.* Browne, 92 U. S. 187.

The *Hampton*, 5 Wall. 376.
The *Siren*, 13 Wall. 393.
U. S. *v.* Steever, 113 U. S. 754.

Captured and abandoned property act of March 12, 1863, held within the power to "make regulations concerning captures on land and water."

Haycraft *v.* U. S., 22 Wall. 81.

Congress may provide for immediate seizure, *in pais*, or through a court, of enemy property, leaving question of enemy ownership *vel non* to be settled later at suit of claimant.

Central Union Trust Co. *v.* Garvan, 254 U. S. 554.
Commercial Trust Co. *v.* Miller, 262 U. S. 51.
U. S. Trust Co. *v.* Miller, 262 U. S. 58.
Ahrenfeldt *v.* Miller, 262 U. S. 60.

The trading with the enemy act was held to be strictly a war measure and within the power of Congress.

Stoehr *v.* Wallace, 255 U. S. 239.

Clause 12.—ARMY.

The Congress shall have power . . . To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years.

Exclusive Power of Congress

In Tarble's case (13 Wall. 408), holding that whenever any conflict arises between the enactments of the State and Federal authorities, those of the National Government have supremacy until the validity of the different enactments and authorities are determined by the tribunals of the United States, the court said:

> Among the powers assigned to the National Government are the power "to raise and support armies" and the power "to provide for the government and regulation of the land and naval forces." The execution of these powers falls within the line of its duties; and its control over the subject is plenary and exclusive. It can determine without question from any State authority how the armies shall be raised, whether by voluntary enlistment or forced draft, the age at which the soldier shall be received, and the period for which he shall be taken, and the compensation he shall be allowed, and the service to which he shall be assigned.

Increase and Reduction of Army

Full power of legislation in the matter of increase and reduction of the Army is with Congress, and Congress may ratify the action of the President in mustering officers out of the service with the same effect as if he had full prior legal authority.

Street *v.* U. S., 133 U. S. 307.
Same *v.* Same, 24 Ct. Cl. 230.

Power of Conscription

This clause, considered in connection with the grants of power to declare war, to make rules for the government and regulation of the land and naval forces, etc., includes the power to compel military service, exercised by the selective draft law of May 18, 1917.

Selective Draft Law Cases, 245 U. S. 366, in which the law was upheld against the following objections: (1) That by some of its administrative features it delegates Federal power to State officials; (2) that it vests both legislative and judicial power in administrative officers; (3) that, by exempting ministers of religion and theological students under certain conditions and by relieving from strictly military service members of certain religious sects whose tenets deny the moral right to engage in war, it is repugnant to the first amendment, as establishing or interfering with religion; and (4) that it creates involuntary servitude in violation of the thirteenth amendment.

See also—

Kneedler *v.* Lane, 45 Pa. 238, as to the constitutionality of the conscription act of March 3, 1863; and

Cox *v.* Wood, 247 U. S. 3, as to conscription for military duty in a foreign country.

Hammerschmidt *v.* U. S., 265 U. S. 182.

Clause 13.—NAVY.

The Congress shall have power . . . To provide and maintain a Navy.

This grant of power authorizes Congress to buy or build vessels of war, to man, arm, and equip them, and to establish naval academies, and to provide for the punishment of desertion and other crimes, and make all needful rules for the government of the Navy.

U. S. *v.* Bevans, 3 Wheat. 336.
Dynes *v.* Hoover, 20 How. 65.
Smith *v.* Whitney, 116 U. S. 182.

Ships of war of a friendly foreign power are not subject to the jurisdiction of the United States while in our ports and are immune from United States laws so long as they respect the sovereignty of this Government.

U. S. *v.* Bevans, 3 Wheat. 336.
The *Exchange*, 7 Cranch 145.
The *Santissima Trinidad*, 1 Brock. 478.

Clause 14.—MILITARY LAW.

The Congress shall have power . . . To make Rules for the Government and Regulation of the land and naval Forces.

Exclusive Power of Congress

The power of Congress to provide for the trial and punishment of military and naval offenses by courts-martial may be exercised under this clause, without regard to the fifth amendment, and it can not be abridged or in any way affected by the States through either their legislative or judicial departments. In Kurtz *v.* Moffitt (115 U. S. 500) the court, citing

Dynes *v.* Hoover (20 How. 65), Ex parte Mason (105 U. S. 700), and Wales *v.* Whitney (114 U. S. 564), said:

> The fifth amendment to the Constitution, which declares that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury," expressly excepts "cases arising in the land and naval forces," and leaves such cases subject to the rules for the government and regulation of those forces which, by the eighth section of the first article of the Constitution, Congress is empowered to make. Courts-martial form no part of the judicial system of the United States, and their proceedings, within the limits of their jurisdiction, can not be controlled or revised by the civil courts.

See also—

Johnson *v.* Sayre, 158 U. S. 115.
Tarble's Case, 13 Wall. 408.
Smith *v.* Whitney, 116 U. S. 176.
Swaim *v.* U. S., 165 U. S. 561.
In re Vidal, 179 U. S. 126.
McClaughry *v.* Deming, 186 U. S. 69.
In re Grimley, 137 U. S. 150.
Carter *v.* McClaughry, 183 U. S. 401.
Carter *v.* Roberts, 177 U. S. 496.

Power to Modify or Repeal Rules

The power to establish rules implies necessarily the power to modify or repeal or to create anew. Army and Navy regulations authorized by Congress have the force of law, and the same effect is given to department regulations by congressional recognition.

U. S. *v.* Eliason, 16 Pet. 302.
U. S. *v.* Freeman, 3 How. 556.
Gratiot *v.* U. S., 4 How. 117.
Ex parte Reed, 100 U. S. 22.
Smith *v.* Whitney, 116 U. S. 176.

Offense Committed by Marine on Board Ship

Under the power to provide and maintain a navy, and the power given by this clause, Congress may enact a statute for the punishment of an offense committed by a marine on board a ship of war wherever that ship may lie.

U. S. *v.* Bevans, 3 Wheat. 390.

Habeas Corpus Proceedings

The civil courts on habeas corpus can only consider whether the military court had jurisdiction.

Carter *v.* Roberts, 177 U. S. 496.
Swaim *v.* U. S., 165 U. S. 553.

Clause 15.—TO PROVIDE FOR CALLING MILITIA.

The Congress shall have power . . . To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.

Power of Congress

Congress is not deprived of its power under this clause when the necessity for its exercise is called out by civil war. Author-

ity to suppress rebellion is found in the power to suppress insurrection and carry on war; and authority to provide for the restoration of State governments, under the Constitution, when subverted and overthrown, is derived from the obligation of the United States to guarantee to every State in the Union a republican form of government. The latter, in the case of a rebellion which involves the government of a State and, for the time, excludes the national authority from its limits, seems to be a necessary complement to the other.

Tyler *v.* Defrees, 11 Wall. 331.
Texas *v.* White, 7 Wall. 700.

Concurrent State Power

Congress may make laws to enforce a call; in this the States have concurrent power, and may prescribe penalties for failure to obey the President's call. They possess also a concurrent power to aid the National Government by calls under their own authority, and in emergencies may use the militia to put down armed insurrection.

Moore v. Houston, 3 S. & R. (Pa.) 176; affirmed in
Houston *v.* Moore, 5 Wheat. 15.

The power to declare war and suppress insurrection carries with it inherently rightful authority to guard against an immediate renewal of the conflict, and to remedy the evils growing out of its rise and progress.

Raymond *v.* Thomas, 91 U .S. 714.
Stewart *v.* Kahn, 11 Wall. 506.

Effect of National Defense Act of 1916

On the question of how far the act of 1903, known as the Dick law, and designed to promote the efficiency of the militia, as amended in 1908, was affected by the act of Congress of June 3, 1916, known as the national defense act, it was held that the latter was intended to give greater efficiency to the Federal military force, through classification and standardization under military regulations and orders based upon existing rights and obligations, rather than one intended to operate to the end that members of the Organized Militia who do not see fit voluntarily to enlist for a longer term and assume the broader obligations which might require them to go beyond the national bounds, should be absolved from the duty of responding to the emergency call of the President in discharge of their obligations, and from the narrower service which they had already assumed under existing law—that of serving a specified term within the national domain. And that when a person had elected not to enlist for the longer term and for the broader service, though not recognized as distinctly a member of the National Guard, that he was still in the service for the Federal purposes contemplated at the time he enlisted in the militia.

Sweetser *v.* Emerson, 236 Fed. 161.

Delegation of Power to the President

Act of Congress of February 28, 1795, delegating to the President power to call forth the militia, held constitutional. Under this act the power to determine when the exigency requiring the calling forth of the militia has arisen is exclusively in the President, and his determination upon this point is conclusive.

Luther *v.* Borden, 7 How. 43.
Martin *v.* Mott, 12 Wheat. 32.

The President may make his request directly to the executive of the State, or by order directed to any subordinate officer of the militia; such a request is, in legal intendment, an order, disobedience of which renders a citizen liable to court-martial.

Houston *v.* Moore, 5 Wheat. 15.

Status of Militia in Service

So long as the militia is acting under the military jurisdiction to which it belongs the State and Federal Governments have concurrent power over it; but the militia is not subject to the rules and Articles of War unless in the actual employment of the United States.

Houston *v.* Moore, 5 Wheat. 16.

Congress has always recognized a substantial difference between the regular forces and the militia, and it is only when called out and actually mustered into the service of the United States that State forces become national militia.

McClaughry *v.* Deming, 186 U. S. 56.
Martin *v.* Mott, 12 Wheat. 19.
Jones *v.* Perkins, 245 U. S. 390.

Relator's claim that he was entitled to discharge from military service under selective draft act of May 18, 1917, on ground that call to service for which draft was made under act, was for duty in foreign country, need not be considered as original proposition; power of Congress to compel military service in foreign country is not restricted to militia clause.

Cox *v.* Wood, 247 U. S. 3.

Clause 16.—TO PROVIDE FOR ORGANIZING MILITIA.

The Congress shall have power . . . To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

In Houston *v.* Moore (5 Wheat. 16) the court said:

Congress has power to provide for organizing, arming, and disciplining them, and this power being unlimited, except in the two particulars of

officering and training them, according to the discipline to be prescribed by Congress, it may be exercised to any extent that may be deemed necessary by Congress. * * * The power of the State governments to legislate on the same subjects having existed prior to the formation of the Constitution, and not having been prohibited by that instrument, it remains with the States, subordinate nevertheless to the paramount law of the General Government, operating upon the same subject.

But after a detachment of the militia has been called forth, and has entered the Federal service, the authority of Congress over such detachment is exclusive.

Clause 17.—SEAT OF GOVERNMENT.

The Congress shall have power . . . To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

District of Columbia

In General

This clause confers upon Congress absolute authority and control over the District of Columbia. It probably grew out of an unpleasant episode in the history of the Continental Congress while it was sitting in Philadelphia. Toward the close of the War of the Revolution Congress was surrounded and greatly mistreated by a body of mutineers of the Continental Army. This led to the removal of the seat of government from Philadelphia to Princeton, N. J., and later, for the sake of greater convenience, to Annapolis. (Watson on the Constitution, p. 698.)

By this clause Congress is given exclusive jurisdiction over the District of Columbia for every purpose of government, national or local, in all cases whatsoever, including taxation. The terms of the clause are not limited by the principle that representation is necessary to taxation; taxes may be levied on the basis of the census directed to be taken by the Constitution.

Loughborough *v.* Blake, 5 Wheat. 321.
Kendall *v.* U. S., 12 Pet. 619.
Shoemaker *v.* U. S., 147 U. S. 300.
Parsons *v.* District of Columbia, 170 U. S. 52.
Capital Traction Co. *v.* Hof, 174 U. S. 5.
Gibbons *v.* District of Columbia, 116 U. S. 404.

Congress legislates for the District with the same power as the legislative assemblies of the States, and in doing so it acts as the legislature of the Union. The failure of Congress to exercise its

power in no way impairs the grant, but it must be exercised subject to the prohibitions contained in the Constitution.

Mattingly *v.* District of Columbia, 97 U. S. 690.
Cohens *v.* Virginia, 6 Wheat. 264.
U. S. *v.* More, 3 Cranch 160.

In Geofroy *v.* Riggs (133 U. S. 258) it was held that the District of Columbia is a " State " within the terms of a treaty with France regulating the rights of Frenchmen to inherit property within the " States of the Union."

The District of Columbia is a separate political community in a certain sense, and in that sense may be called a State whose sovereign power is lodged in the Government of the United States; but it is not strictly a State within the meaning of that term as used in the Constitution. The inhabitants of the District are not citizens of a State.

Metropolitan R. R. *v.* District of Columbia, 132 U. S. 9.
Talbott *v.* Silver Bow County, 139 U. S. 444.
Hepburn *v.* Ellzey, 2 Cranch 453.
Hooe *v.* Jamieson, 166 U. S. 397.

The District of Columbia is a municipal corporation, and as such it may be invested with legislative authority; but it can exercise only those powers which are expressly conferred by statute, which must be of a strictly municipal nature.

Thompson *v.* Carroll, 22 How. 435.
U. S. *v.* Bevans, 3 Wheat. 388.
Welch *v.* Cook, 97 U. S. 542.
District of Columbia *v.* Bailey, 171 U. S. 176.
Stoutenburgh *v.* Hennick, 129 U. S. 147.

Congress may delegate the power to improve or repair streets and to assess adjacent property therefor, and to regulate public markets; but the power of Congress to regulate commerce can not be delegated to the District.

Willard *v.* Presbury, 14 Wall. 680.
Wilson *v.* Lambert, 168 U. S. 614.
Wight *v.* Davidson, 181 U. S. 379.
Washington Market Co. *v.* District of Columbia, 172 U. S. 367.

The act of July 16, 1790, providing for the establishment of the seat of government, accepted a certain district, but by its provisions State laws were not to be affected until Congress provided for the government of the District. As such provision was not made until February 27, 1801, the State right to legislate continued until that time, and where the acts of Congress made no changes in the existing laws the laws of Virginia and Maryland remained in force in the parts of the District ceded by them respectively, but the effect of statutes within the District can

not be controlled by decision of the State courts rendered since the cession.

Young *v.* Bank of Alexandria, 4 Cranch 384.
U. S. *v.* Simms, 1 Cranch 256.
Tayloe *v.* Thomson, 5 Pet. 368.
Ex parte Watkins, 7 Pet. 574.
Deneale *v.* Archer, 8 Pet. 530.
Stelle *v.* Carroll, 12 Pet. 205.
U. S. *v.* Eliason, 16 Pet. 301.
Rhodes *v.* Bell, 2 How. 404.
Russell *v.* Allen, 107 U. S. 171.

As to the operation of the cession upon individuals its only effect was to terminate the State citizenship of residents; contract obligations were not affected, and liens on property for debt were continued.

Reily *v.* Lamar, 2 Cranch 356.
Korn *v.* Mutual Assur. Soc., 6 Cranch 199.
Mutual Assur. Soc. *v.* Watts, 1 Wheat. 282.

Cession of Territory and Assumption of Sovereignty

Land ceded by Virginia and Maryland.—In pursuance of this clause Virginia by act of December 3, 1789, ceded to the United States that part of her territory subsequently known as Alexandria County, and Maryland ceded the county of Washington, which cessions were accepted by Congress.

Phillips *v.* Payne, 92 U. S. 131.

Date jurisdiction of United States vested.—In U. S. *v.* Hammond (1 Cranch [C. C.] 15) it was held that the jurisdiction of the United States over the District of Columbia vested on the first Monday in December, 1800.

But see U. S. *v.* Williams (4 Cranch [C. C.] 372), wherein it was held that the laws of Maryland and Virginia, which were adopted by act of Congress of February 27, 1801 (2 Stat. 103), do not operate here *proprio vigore*, but solely by virtue of the act which adopted them *en masse* instead of enacting them *totidem verbis*. Such of those laws only can be considered as adopted as were applicable to the circumstances of the District; such as were local in their nature and operation, and such as were applicable only to State officers or State courts could not operate here, because the subjects upon which they were to operate did not exist here.

See also—
Capital Traction Co. *v.* Hof, 174 U. S. 36.

The compact of 1785 between Virginia and Maryland in respect to the free navigation of the Potomac was a compact between the two States as such, the citizens of each being entitled individually to the benefit of it, but individually in no just sense parties to it. The compact could be modified or annulled at the will of the two States, and when they ceded the District of Columbia to the United States whatever the Legislatures of Virginia and Maryland could have before done could be done by

Congress after the cession in respect to that portion of the river within the District subject only to the limitations imposed by the act of cession.

Georgetown *v.* Alexandria Canal Co., 12 Pet. 91.

In Marine R. Co. *v.* U. S. (257 U. S. 47), it was said that this compact did not settle the question of boundary between the States.

Suits pending at time of cession.—It was intended on the cession to the United States that the suits then pending in the Maryland tribunals should be proceeded in until final decision, and that the judgments and decrees there made should be as valid and conclusive as if the sovereignty had not been transferred to the United States.

Van Ness *v.* U. S. Bank, 13 Pet. 17.

Title of United States to streets.—Under the agreement between the original proprietors of the lands on which the city of Washington was laid out and the commissioners, and upon the enactment of the Maryland act of December 19, 1791, ratifying the cession, the United States became the owner in fee of the streets of the city, although no conveyance thereof by the trustees was ever in fact made as provided in such agreement.

Morris *v.* U. S., 174 U. S. 196.

Status and Governmental Powers of District

Organization of district.—The District of Columbia is a municipal corporation, although its organization is peculiar, there being no general organic law covering all of the ordinary powers usually conferred in the creation of a municipal corporation; no formal charter.

District of Columbia *v.* Tyrrell, 41 App. D. C. 463.

Sovereignty.—Certain corporate powers are exercised by the District Government, yet the District of Columbia as the seat of the government is controlled by Congress exclusively. The United States Government is the sovereign and the District government one of the agencies of the sovereign power.

Mackey *v.* U. S., 47 Ct. Cl. 121.
See also—
James *v.* U. S., 38 Ct. Cl. 615; reversed in 202 U. S. 401.

National and municipal powers blended in Congress.—In Pollard *v.* Hagan (3 How. 223), it was held:

Within the District of Columbia and the other places purchased and used for the purposes above mentioned, the national and municipal powers of government of every description are united in the Government of the Union; and these are the only cases within the United States in which all the powers of government are united in a single government, except in the cases * * * of the temporary Territorial governments, and there a local government exists.

Employers' liability act.—The act of Congress of June 11, 1906, known as the employers' liability act, was held valid as applied

to causes of action arising within the District of Columbia and the Territories.

El Paso, etc., R. Co. *v.* Gutierrez, 215 U. S. 87.

Courts of the District of Columbia

There is in this District no division of powers between the General and State Government. Congress has the entire control over the District for every purpose of government, and in organizing a judicial department here all judicial power necessary for the purposes of government would be vested in the courts of justice.

Kendall *v.* U. S., 12 Pet. 619.

That the Supreme Court of the District of Columbia is a court of the United States results from the right which the Constitution has given to Congress of exclusive legislation over the District.

Embry *v.* Palmer, 107 U. S. 3.
Barney *v.* Baltimore, 6 Wall. 287.
Callan *v.* Wilson, 127 U. S. 540.

In Keller *v.* Potomac Elec. Co., 261 U. S. 428, it was held that under this clause Congress may vest legislative power as to rates and regulations of a public utility in the courts of the District, but that an attempt to vest such power in the United States Supreme Court was void.

Common-Law Offenses

The rule that there are no common-law offenses against the United States does not apply in the District of Columbia.

In De Forest *v.* U. S. (11 App. Cas. [D. C.] 465), the court said:

> As against the United States regarded as coextensive with the Federal Union of States and operating within the territorial limits of the States, it is undoubtedly true that there are no common-law offenses, for the jurisdiction there given to the United States by the Federal Constitution is distinctly and expressly restricted to the powers enumerated in the Constitution. But the statement was not intended to have application to the District of Columbia.

See also—

Tyner *v.* U. S., 23 App. Cas. (D. C.), 324.

Crimes Against the United States

In Metropolitan R. Co. *v.* District of Columbia (132 U. S. 9) it was held:

> Crimes committed in the District are not crimes against the District, but against the United States; therefore, whilst the District may, in a sense, be called a State, it is such in a very qualified sense.

Power of Taxation

Exclusively in Congress.—The power of Congress to exercise exclusive jurisdiction within the District includes the power of taxation.

Parsons *v.* District of Columbia, 170 U. S. 56.
Loughborough *v.* Blake, 5 Wheat. 317.

Assessments on property for local improvements.—Congress has power to confer upon the city of Washington authority to assess upon the adjacent proprietors of lots the expenses of repairing streets.

Willard *v.* Presbury, 14 Wall. 680.
Briscoe *v.* Rudolph, 221 U. S. 547.
See also—
Wight *v.* Davidson, 181 U. S. 379, as to effect of fifth and fourteenth amendments.

Congress may authorize assessments previously made by the District of Columbia without authority of law, as was done by the act of June 19, 1878.

Mattingly *v.* District of Columbia, 97 U. S. 690.

Nonresidents.—Residents of District of Columbia can not complain that tax law was invalid because of tax on nonresidents.

Heald *v.* District of Columbia, 259 U. S. 114.

Assessments on property for national purposes.—The act of Congress of September 27, 1890, entitled "An act authorizing the establishment of a public park in the District of Columbia," dedicating and setting apart this park "for the benefit and enjoyment of the people of the United States," and assessing property in the District of Columbia for the cost and expenses of locating and improving the park, was held to be valid.

Wilson *v.* Lambert, 168 U. S. 612.

License tax as an interference with interstate commerce.[1]—Act of the legislative assembly of the District of Columbia which imposes "a license on trades, business, and professions practiced or carried on in the District of Columbia," is invalid as being a regulation of interstate commerce.

Stoutenburgh *v.* Hennick, 129 U. S. 147.

Exempting property from taxation.—Congress has power to invest the District government with legislative authority, and an act of the legislative assembly exempting certain property from taxation under prescribed conditions was within that authority.

Welch *v.* Cook, 97 U. S. 542.
Gibbons *v.* District of Columbia, 116 U. S. 407.

Places Purchased

In General

The phrase "places purchased" limits the National Government to one mode of acquiring exclusive legislative authority over land within a State, namely, by purchase with the State's consent; when land is acquired in any other way, as by cession, any conditions may be annexed to it not inconsistent with the public use contemplated. So a State may impose the condition that jurisdiction shall be retained by the United States only so

[1] For other cases involving interstate commerce, see commerce clause, p. 83.

long as the place is used for the purposes specified; may continue its laws in force there so far as they do not conflict with necessary acts of Congress; or may provide that civil and criminal process of State courts may be executed therein; but where a cession has been made subject to certain conditions, the United States takes entire political jurisdiction, save as expressed in the conditions, and it can not be limited without the consent of Congress.

Chicago, etc., R. Co. *v.* McGlinn, 114 U. S. 545.
Palmer *v.* Barrett, 162 U. S. 399.
In re Ladd, 74 Fed. 31.

Consent or ratification by the State is necessary to the acquisition of exclusive jurisdiction, but it is necessary for no other purpose, and can not be required in order to permit the United States to exercise its right of eminent domain.

U. S. *v.* San Francisco Brdg. Co., 88 Fed. 891.
Chappell *v.* U. S., 160 U. S. 510.

Federal Jurisdiction

By the constitutional method.—When the title is acquired by purchase by consent of the legislatures of the States, the Federal jurisdiction is exclusive of all State authority. When a purchase of land for any of the purposes enumerated is made by the National Government and the State legislature has given its consent to the purchase, the land so purchased, by the very terms of the Constitution, *ipso facto* falls within the exclusive legislation of Congress, and the State jurisdiction is completely ousted. This is the necessary result, for exclusive jurisdiction is the attendant upon exclusive legislation.

Ft. Leavenworth R. Co. *v.* Lowe, 114 U. S. 532.
U. S. *v.* Cornell, 2 Mason (U. S.) 60.

As to land purchased without the consent of the State, as at tax sale, or where political jurisdiction over the same has not been otherwise ceded to the United States, see

U. S. *v.* Penn, 48 Fed. 669.
Palmer *v.* Barrett, 162 U. S. 402.

By other than constitutional method.—Where lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualification:

That if upon them forts, arsenals, or other public buildings are erected for the uses of the General Government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use. * * * Such is the law with reference to all instrumentalities created by the General Government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But when not used as such instrumentalities, the legis-

lative power of the State over the places acquired will be as full and complete as over any other places within her limits.

Ft. Leavenworth R. Co. *v.* Lowe, 114 U. S. 539.

See also—

Benson *v.* U. S., 146 U. S. 325.

Chicago, etc., R. Co. *v.* McGlinn, 114 U. S. 545

National and Municipal Powers United

In Pollard *v.* Hagan (3 How. 223) it was said:

Within the District of Columbia and the other places purchased and used for the purposes above mentioned, the national and municipal powers of government of every description are united in the Government of the Union.

Jurisdiction to Recapture Escaped Felon

In Cohens *v.* Virginia (6 Wheat. 428) Chief Justice Marshall, in speaking of the recapture of a felon escaped from a place over which the United States had exclusive jurisdiction, said:

The power vested in Congress, as the Legislature of the United States, to legislate exclusively within any place ceded by a State, carries with it, as an incident, the right to make that power effectual. If a felon escape out of the State in which the act has been committed, the Government can not pursue him into another State and apprehend him there, but must demand him from the executive power of that other State. If Congress were to be considered merely as the local legislature for the fort or other place in which the offense might be committed, then this principle would apply to them as to other local legislatures, and the felon who should escape out of the fort or other place in which the felony may have been committed could not be apprehended by the marshal but must be demanded from the executive of the State. But we know that the principle does not apply; and the reason is that Congress is not a local legislature, but exercises this particular power, like all its other powers, in its high character as the Legislature of the Union.

For Purposes Not Named

The broadest construction has been put upon the language of this clause—one which makes it cover all structures and all places necessary for carrying on the business of the National Government.

U. S. *v.* Tucker, 122 Fed. 518.

Murder committed in a post office over which the State had ceded jurisdiction may be prosecuted in a Federal court under section 5339, Revised Statutes.

Battle *v.* U. S., 209 U. S. 36.

State Jurisdiction

Judicial and legislative.—The cession by the State includes judicial as well as legislative jurisdiction.

Steele *v.* Halligan, 229 Fed. 1011.

Over national soldiers' home.—A State has not the power to legislate so as to control the governor of a national soldiers' home, acting under the direction of the board of managers and

by the authority of Congress, in regard to the internal administration of the affairs of the home.

Ohio *v.* Thomas, 173 U. S. 276.

See also—

In re Kelly, 71 Fed. 551, as to offense committed at a national soldiers' home.

Operation of State railroad stock law.—Upon the cession by a State of jurisdiction to the United States over a particular tract, a law of the State respecting the liability of a railroad within the territory ceded for the killing of stock remains in force, it being in no respect inconsistent with any law of the United States, never having been changed or abrogated.

Chicago, etc., R. Co. *v.* McGlinn, 114 U. S. 547.

Penalty for default in delivery of telegram.—State statute providing for the recovery of a penalty for default in the delivery of a telegram does not apply to a telegram to be delivered within a United States navy yard.

Western Union *v.* Chiles, 214 U. S. 274.

Clause 18.—INCIDENTAL POWERS.

The Congress shall have power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Leading Cases

McCulloch *v.* Maryland, 4 Wheat. 316.
Gibbons *v.* Ogden, 9 Wheat, 1.
Legal Tender Case, 110 U. S. 421.
Anderson *v.* Dunn, 6 Wheat. 204.
Kilbourn *v.* Thompson, 103 U. S. 168.
Ex parte Curtis, 106 U. S. 371.
Logan *v.* U. S., 144 U. S. 263.
Chinese Exclusion Case, 130 U. S. 581.

In General

This clause is not a limitation or restriction upon the powers of Congress, but an enlargement of them. Many powers are necessarily implied under the express grants of power in the Constitution; "it would be utopian to suppose that a government can exist without leaving the exercise of discretion somewhere."

U. S. *v.* Fisher, 2 Cranch 396.
McCulloch *v.* Maryland, 4 Wheat. 411.
U. S. *v.* Marigold, 9 How. 560.
Legal Tender Cases, 12 Wall. 532.
I. C. C. *v.* Brimson, 154 U. S. 472.
In re Debs, 158 U. S. 578.
In re Quarles, 158 U. S. 537.

The Constitution does not profess to enumerate the means by which the powers it confers shall be enumerated, and where an end is required and a duty is enjoined the ability to perform it is contemplated to exist on the part of the functionaries to whom it is intrusted.

McCulloch *v.* Maryland, 4 Wheat. 407.
Prigg *v.* Commonwealth, 16 Pet. 614.
U. S. *v.* Cruikshank, 92 U. S. 542.
Thomson *v.* Pacific R. Co., 9 Wall. 579.

The courts will determine whether the means employed by Congress to accomplish the ends sought have any relation to the powers granted by the Constitution, and if the measures adopted as the most eligible and appropriate are adapted to the end to be accomplished, and are not inconsistent in letter or spirit with the limitations of the Constitution, the courts can not declare them inexpedient or unwise.

Cherokee Nation *v.* Kansas R. Co., 135 U. S. 657.
Logan *v.* U. S., 144 U. S. 283.
Motes *v.* U. S., 178 U. S. 462.
Wilkes *v.* Dinsman, 7 How. 127.

Every act of Congress, to be valid, must find in the Constitution some warrant for its passage; but while construction, for the purpose of conferring a power, should be resorted to with great caution, yet resort must be had to every reasonable construction to save a statute from unconstitutionality, and a choice of means by Congress is not to be adjudged invalid unless the conflict between the Constitution and the statute is clear and strong.

U. S. *v.* Harris, 106 U. S. 635.
Mugler *v.* Kansas, 123 U. S. 661.
Hooper *v.* California, 155 U. S. 657.
Sweet *v.* Rechel, 159 U. S. 392.

In the execution of a power Congress is not restricted to the employment of those means alone without which the power would be nugatory, and if the end may be reached indirectly by one mode, it may be reached directly by another. The limitation of necessity and propriety expressed in this clause extends only to incidental legislation, and in no way affects the powers expressly granted.

Boske *v.* Comingore, 177 U. S. 468.
I. C. C. *v.* Brimson, 154 U. S. 486.

Every right created by, arising under, or dependent upon the Constitution may be protected or enforced by such means as Congress may deem best; if the Constitution guarantees a right, the National Government is clothed with authority to enforce it—the powers given to the National Government are not ineffective because the means of enforcing them are not expressly given. Congress has a large discretion as to the means to be employed, and may employ those means which, in its judgment,

are most advantageous, taking care only that they are not inconsistent with the limitations placed upon the general power by the Constitution.

In re Quarles, 158 U. S. 535.
Prigg *v.* Commonwealth, 16 Pet. 619.
McCulloch *v.* Maryland, 4 Wheat. 419.

Congress has undoubted power to construct interstate highways, and as a means to the exercise of that power may organize a corporation. Under its power to regulate commerce Congress may empower a commission to investigate the conduct of interstate commerce, and may provide a penalty for obstructing it.

Luxton *v.* North River Bridge Co., 153 U. S. 529.
I. C. C. *v.* Brimson, 154 U. S. 473.
U. S. *v.* Coombs, 12 Pet. 78.
In re Debs, 158 U. S. 578.[1]

Congress may use all known and appropriate means for collecting and disbursing the revenue, and may provide for the protection of revenue collectors and officers, and in case of the death of a collector may provide that the Government shall be the first paid out of his estate.

Murray *v.* Hoboken, etc., Co., 18 How. 272.
Dugan *v.* U. S., 3 Wheat. 179.
U. S. *v.* Bevans, 3 Wheat. 388.
The Exchange, 7 Cranch 116.
U. S. *v.* Tingey, 5 Pet. 115.

As an incident to its power to carry on war Congress had power to suspend the operation of the statute of limitations during the Rebellion and to pass the nonintercourse acts.

Stewart *v.* Kahn, 11 Wall. 507.
Hamilton *v.* Dillin, 21 Wall. 93.

Under this clause Congress may incorporate a bank. National banks being designed to aid the Government, Congress is the sole judge of the necessity for creating them.

McCulloch *v.* Maryland, 4 Wheat. 411.
Farmers', etc., Bank *v.* Dearing, 91 U. S. 33.
Osborn *v.* U. S. Bank, 9 Wheat. 738.
See also—
U. S. *v.* Fisher, 2 Cranch 386.
Talbot *v.* Silver Bow County, 139 U. S. 440.
People *v.* Weaver, 100 U. S. 543.

The power to make Treasury notes legal tender is not expressly given to Congress, but the power exists and is attributable to the power to borrow money on the credit of the United States and to regulate the currency.

Legal Tender Cases, 12 Wall. 553; 110 U. S. 438.

Congress may create, define, and punish crimes or offenses when necessary for effectuating the objects of government. The

[1] For other citations under the power of Congress to regulate commerce, see commerce clause, p. 83.

power to punish offenses is incidental to constitutional powers of sovereignty. The alteration of registered United States bonds may be made a crime against the United States and be punished as such; also the passing of counterfeit national bank bills; the conspiring to injure prisoners in the custody of a United States marshal; and bringing into the country counterfeit foreign coins. There is a peace of the United States for the breach of which Congress may provide a penalty.

U. S. *v.* Worrall, 2 Dall. 384.
U. S. *v.* Marigold, 9 How. 567.
U. S. *v.* Hall, 98 U. S. 357.
McCulloch *v.* Maryland, 4 Wheat. 420.
Ex parte Carll, 106 U. S. 523.
Logan *v.* U. S., 144 U. S. 283.
In re Neagle, 135 U. S. 69.
In re Quarles, 158 U. S. 535.

Congress may also make all laws necessary for carrying into execution the judgments of Federal courts, and having the power to make such laws may proceed under them to satisfy a judgment in favor of the Government. This power of regulating proceedings may be delegated by Congress to the courts themselves. So also when a Territory is admitted as a State Congress may designate the court to which records shall be transferred and prescribe the mode for enforcement and review of judgments.

U. S. Bank *v.* Halstead, 10 Wheat. 53.
Wayman *v.* Southard, 10 Wheat. 1.
Express Company *v.* Kountze, 8 Wall. 350.
Hunt *v.* Palao, 4 How. 590.

Other instances in which this incidental power has been held to have been validly exercised are: Acts prohibiting the mailing of letters or circulars containing lotteries; acts providing for the lease of public lands; acts providing for the condemnation of lands for various purposes of government; acts providing for the distraint of property to satisfy a Federal tax; acts providing for extensions of patent rights; an act levying a tax on State bank notes in circulation; an act protecting homesteads on public lands.

Ex parte Jackson, 96 U. S. 732.
In re Rapier, 143 U. S. 133.
U. S. *v.* Gratiot, 14 Pet. 537.
Kohl *v.* U. S., 91 U. S. 373.
U. S. *v.* Fox, 94 U. S. 320.
Van Brocklin *v.* Tennessee, 117 U. S. 154.
Cherokee Nation *v.* Kansas R. Co., 135 U. S. 656.
Springer *v.* U. S., 102 U. S. 593.
Veazie Bank *v.* Fenno, 8 Wall. 533.
U. S. *v.* Waddell, 112 U. S. 76.

Grant of Power

"Necessary and Proper"

This phrase was construed in Legal Tender Cases (110 U. S. 440) in this language:

> By the settled construction and the only reasonable interpretation of this clause, the words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously affect it.

See also Legal Tender Cases (12 Wall. 550), where it was said:

> It is impossible to know what those nonenumerated powers are, and what is their nature and extent, without considering the purposes they were intended to subserve. Those purposes, it must be noted, reach beyond the mere execution of all powers definitely intrusted to Congress and mentioned in detail. They embrace the execution of all other powers vested by the Constitution, in the Government of the United States, or in any department or officer thereof. * * * We are accustomed to speak for mere convenience of the express and implied powers conferred upon Congress. But in fact the auxiliary powers, those necessary and appropriate to the execution of other powers singly described, are as expressly given as is the power to declare war, or to establish uniform laws on the subject of bankruptcy. They are not catalogued, no list of them is made, but they are grouped in the last clause of section 8 of the first article, and granted in the same words in which all other powers are granted to Congress.

See also—

Logan *v.* U. S., 144 U. S. 282.
Anderson *v.* Dunn, 6 Wheat. 225.
McCulloch *v.* Maryland, 4 Wheat. 419.
First National Bank *v.* Union Trust Co., 244 U. S. 416.
Rhode Island *v.* Massachusetts, 12 Pet. 730.

Congress has a large discretion as to the means to be employed in the exercise of any power granted it.

Northern Securities Co. *v.* U. S., 193 U. S. 343.
Fairbank *v.* U. S., 181 U. S. 287.
U. S. *v.* Sugar, 243 Fed. 423.
Story *v.* Perkins, 243 Fed. 997, affirmed in Jones *v.* Perkins, 245 U. S. 390.

Maritime Jurisdiction

State legislation affecting general maritime law held invalid under Article III, section 2, this clause giving Congress power to make all necessary laws, and Judicial Code, section 24 and section 256, giving Federal district courts exclusive jurisdiction of civil causes of admiralty jurisdiction.

Southern Pacific Co. *v.* Jensen, 244 U. S. 205.
Clyde S. S. Co. *v.* Walker, 244 U. S. 255.

In Knickerbocker Ice Co. *v.* Stewart (253 U. S. 149) the act of Congress of October 6, 1917 (40 Stat. 395), amending the Judicial Code relating to admiralty jurisdiction by saving "to claimants the rights and remedies under the workmen's compensation law of any State," was held unconstitutional as an attempt to delegate the legislative power of Congress under this clause and section 2 of Article III.

See also Washington *v.* Dawson & Co., 264 U. S. 219, in which the act of Congress of June 10, 1922 (42 Stat. 634), was held unconstitutional in undertaking to permit application of the workmen's compensation laws of the several States to injuries within the admiralty and maritime jurisdiction, for the reasons explained in Southern Pacific Co. *v.* Jensen, 244 U. S. 205, Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149, and other cases reviewed.

Within the legitimate scope of this grant, Congress is permitted to determine for itself what is necessary and what is proper.

Ex parte Curtis, 106 U. S. 371.
U. S. *v.* Hoke, 187 Fed. 992, affirmed in 227 U. S. 308.

In Legal Tender Cases (12 Wall., 543) the Court said:

Congress is not authorized to enact laws in furtherance even of a legitimate end, merely because they are useful, or because they make the Government stronger. There must be some relation between the means and the end; some adaptedness or appropriateness of the laws to carry into execution the powers created by the Constitution.

But in I. C. C. *v.* Brimson (154 U. S., 473) Mr. Justice Harlan said:

Congress is not limited in its employment of means to those that are absolutely essential to the accomplishment of objects within the scope of the powers granted to it. * * * The test of the power of Congress is not the judgment of the courts that particular means are not the best that could have been employed to effect the end contemplated by the legislative department. The judiciary can only inquire whether the means devised in the execution of a power granted are forbidden by the Constitution. It can not go beyond that inqury without intrenching upon the domain of another department of the Government.

See also Logan *v.* U. S. (144 U. S. 282), in which it is held that in the exercise of the general power given by this provision Congress may use any means appearing to it most eligible and appropriate, which are adapted to the end to be accomplished, and are consistent with the letter and spirit of the Constitution.

Legislation Giving Effect to Treaty Stipulations

The power of Congress to make all laws "necessary and proper" for carrying into execution the powers vested in the Government of the United States includes the power to enact such legislation as is appropriate to give effect to any stipulations which it is competent for the President, by and with the advice and consent of the Senate, to insert in a treaty with a foreign power.

Neely *v.* Henkel, 180 U. S. 121.

Incorporation of National Banks

Congress has the power to incorporate national banks with the capacity, for their own profit as well as for the use of the Government in its money transactions, of issuing bills which under ordinary circumstances pass from hand to hand as money at their nominal value, and which, when so current, the law has

always recognized as a good legal tender in payment of money debts, unless specifically objected to at the time of the tender.

Legal Tender Case, 110 U. S. 445.
U. S. Bank *v.* Bank of Georgia, 10 Wheat. 333.
Ward *v.* Smith, 7 Wall. 447.
Farmers' Bank *v.* Dearing, 91 U. S. 33.

The act of Congress incorporating the Bank of the United States was held to be a law made in pursuance of the Constitution and part of the supreme law of the land.

In McCulloch *v.* Maryland (4 Wheat. 407) the court said:

Although among the enumerated powers of Government we do not find the word "bank" or "incorporation," we find the great powers to lay and collect taxes, to borrow money, to regulate commerce, to declare and conduct a war, and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the Nation, are intrusted to its Government. It can never be pretended that these vast powers draw after them others of inferior importance merely because they are inferior. Such an idea can never be advanced. But it may with great reason be contended that a government intrusted with such ample powers, on the due execution of which the happiness and prosperity of the Nation so vitally depend, must also be intrusted with ample means for their execution.

See also—
Osborn *v.* U. S. Bank, 9 Wheat. 738.

Act of June 3, 1864, subjects shares of bank associations authorized by it and in the hands of shareholders to taxation by the State under certain limitations, without regard to the fact that a part or the whole of the capital is invested in national securities declared by statute to be exempt, and the act thus construed is constitutional.

Van Allen *v.* Assessors, 3 Wall. 581.

Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations.

Easton *v.* Iowa, 188 U. S. 220.

Congress may prohibit any taxation of national banks by States, cities, counties, or towns, and its mere silence on the subject, if it were silent, would be a prohibition.

First Nat. Bank *v.* Richmond, 39 Fed. 309; appeal dismissed, 149 U. S. 769.

The provision of the act of Congress establishing the Federal Reserve Board giving to that board authority "to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds," held valid.

First National Bank *v.* Union Trust Co., 244 U. S. 416.
Contra—
People *v.* Brady, 110 N. E. 864.

Statute securing title to persons occupying lands for seven years in good faith does not apply to receiver of national bank acquiring title to its assets by a secret trust.

Baker *v.* Schofield, 243 U. S. 114.

Legal Tender Treasury Notes

The acts of Congress making Treasury notes legal tender were held to be valid when applied to contracts made before their passage as well as to debts contracted since their enactment.

Legal Tender Cases, 12 Wall. 544, overruling Hepburn *v.* Griswold, 8 Wall. 603.

See also—

Railroad Co. *v.* Johnson, 15 Wall. 195.

Dooley *v.* Smith, 13 Wall. 604.

Legal Tender Cases, 110 U. S. 449.

Distribution of Judicial Power

Under this clause Congress passed the judiciary act of 1789, under which the judicial system of the United States was organized, the powers of the courts defined, and the manner of their exercise regulated. In Rhode Island *v.* Massachusetts (12 Pet. 721) the court said:

It was necessarily left to the legislative power to organize the Supreme Court, to define its powers consistently with the Constitution as to its original jurisdiction, and to distribute the residue of the judicial power between this and the inferior courts, which it was bound to ordain and establish, defining their respective powers, whether original or appellate, by which and how it should be exercised. In obedience to the injunction of the Constitution Congress exercised their power, so far as they thought it necessary and proper, * * * for carrying into execution the powers vested by the Constitution in the judicial as well as all other departments and officers. * * * No department could organize itself; the Constitution provided for the organization of the legislative power and the mode of its exercise, but it delineated only the great outlines of the judicial power, leaving the details to Congress, in whom was vested, by express delegation, the power to pass all laws necessary and proper for carrying into execution all powers except their own.

U. S. *v.* Bevans, 3 Wheat. 389.

Martin *v.* Hunter, 1 Wheat. 326.

Ableman *v.* Booth, 21 How. 521.

Congress may provide for the review of the action of commissions and boards created by it exercising *quasi* judicial powers for the transfer of their proceedings and decisions to judicial tribunals for determination *de novo*, and may do so in respect of the action of tribal authorities.

Stephens *v.* Cherokee Nation, 174 U. S. 445.

This clause was considered in support of the legislation in Revised Statutes, sec. 643, relating to the removal of causes against Federal officers in—

Tennessee *v.* Davis, 100 U. S. 263.

The power to prescribe what effect shall be given to the judicial proceedings of the Federal courts is conferred by this clause and other provisions of the Constitution.

Embry *v.* Palmer, 107 U. S. 3.

Congress possesses the constitutional power and is charged with the constitutional duty to protect all the agencies of the Federal Government including the courts, their officers, and all persons whose attendance is necessary in the proceedings of those courts, such as parties, witnesses, and jurors.

U. S. *v.* Sanges, 48 Fed. 78; writ of error dismissed in 144 U. S. 310, holding that a writ of error does not lie in behalf of the United States in a criminal case.

Judgments

The authority to carry into complete effect the judgments of the courts necessarily results by implication from the power to ordain and establish such courts. But it does not rest altogether upon such implication, for express authority is given to Congress to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States.

U. S. Bank *v.* Halstead, 10 Wheat. 53.

States have no authority to control these proceedings, except as far as the State process acts are adopted by Congress or by the courts of the United States under the authority of Congress.

Wayman *v.* Southard, 10 Wheat. 22.

Punishment of Crimes

In General

Although the Constitution contains no grant, general or specific, to Congress of the power to provide for the punishment of crimes except piracies and felonies on the high seas, offenses against the law of nations, treason, and counterfeiting the securities and current coin of the United States, no one doubts the power of Congress to provide for the punishment of all crimes within one of the States of the Union or within the territory over which Congress has plenary and exclusive jurisdiction.

Logan *v.* U. S., 144 U. S. 283.
U. S. *v.* Hall, 98 U. S. 346.
U. S. *v.* Fox, 95 U. S. 672.

Impersonating a Federal Officer

Act of Congress of March 4, 1909, making it an offense falsely to assume or pretend to be an officer or employee acting under the authority of the United States or any department with intent to defraud held to be within the general power of Congress.

U. S. *v.* Barnow, 239 U. S. 74.

Implied Power

The power of Congress to prescribe a penalty for the infraction of a rule or regulation which the Constitution expressly empowers it to enact is clearly and necessarily implied, and if it was not so implied authority for it is found in this section.

Howard *v.* Illinois Cent. R. Co., 148 Fed. 997, affirmed in 207 U. S. 463.

Punishment for Conspiracy

Act providing punishment for any two or more persons conspiring to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, etc., was lawfully enacted under the authority of this clause.

Ex parte Yarbrough, 110 U. S. 651.
U. S. *v.* Waddell, 112 U. S. 76.
Motes *v.* U. S., 178 U. S. 458.

Whether it is competent for Congress to exempt the employees of the United States from arrest on criminal process from the State courts for crimes charged against them *mala in se* doubted.

U. S. *v.* Kirby, 7 Wall. 486.

Encouragement of Patriotism

Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country, and to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with and appropriate to the exercise of some one or all of the powers granted by Congress must be valid.

U. S. *v.* Gettysburg Elec. R. Co., 160 U. S. 681.

Protection of Guaranteed Civil Rights

The right of a citizen of the United States in the custody of a United States marshal under a lawful commitment to answer for an offense against the United States to be protected against lawful violence is a right secured to him by the Constitution.

Logan *v.* U. S., 144 U. S. 263.
U. S. *v.* Mosley, 238 U. S. 383.
Rakes *v.* U. S., 212 U. S. 55.
Ex parte Yarbrough, 110 U. S. 651.
U. S. *v.* Waddell, 112 U. S. 76.
In re Quarles, 158 U. S. 537.

Raising Funds for Political Purposes

Act of Congress of Aug. 15, 1876, ch. 287, sec. 6, providing "that all executive officers or employees of the United States not appointed by the President * * * are prohibited from requesting, giving to, or receiving from any other officer or employee of the Government any money or property or other thing of value for political purposes," held constitutional.

Ex parte Curtis, 106 U. S. 371.

Section 9.—POWERS DENIED TO CONGRESS.

Clause 1.—IMPORTATION OF SLAVES.[1]

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit,

[1] Except as a matter of history, this clause now has but little interest.

shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

In General

The several clauses of this section impose limitations upon the powers of Congress and were not intended to apply to the State governments. The first clause is a restriction upon the general power to regulate commerce (see Art. I, sec. 8, cl. 3); but while it is to be deemed a limitation upon a power already granted, rather than a grant of power, members of the constitutional convention recognized that it was designed to confer upon Congress power to abolish the slave trade from the period limited, and an act of Congress having that object was later upheld.

Munn *v.* Illinois, 94 U. S. 135.
Morgan *v.* Louisiana, 118 U. S. 467.
Johnson *v.* Chicago, etc., Ele. Co., 119 U. S. 400.
Passenger Cases, 7 How. 401.
Gibbons *v.* Ogden, 9 Wheat. 216.
Madison papers, pp. 1388–1673.
Groves *v.* Slaughter, 15 Pet. 514.
U. S. *v.* Preston, 3 Pet. 65.

In People *v.* Compagnie Gen. Trans. (107 U. S. 62) the Supreme Court declared that there has never been any doubt that the first clause of this section refers only to persons of the African race, and that the words "migration" and "importation" refer to the different conditions of this race as regards freedom and slavery.

"Importation" had always been applied to property and things as contradistinguished from persons, and as the framers of the Constitution were unwilling to use the word "slaves," and described them as "persons," it was necessary to use the word "migration" as applied to them. Notwithstanding the early dictum that "migration" applies to voluntary as well as involuntary arrivals, the clause has finally been restricted in its application to the African race.

Scott *v.* Sandford, 19 How. 393.
Passenger Cases, 7 How. 475.
Gibbons *v.* Ogden, 9 Wheat. 216.

Persons

This clause includes within it the migration of other persons as well as the importation of slaves, and in terms recognizes that other persons as well as slaves may be the subject of importation and commerce. This clause, taken in connection with Art. I, sec. 8, cl. 18, "seems necessarily to include the whole power over the subject; and the Constitution and laws of the United States being the supreme law of the land, State power can not be extended over the same subject." It therefore follows that passengers entering ports on vessels can never be subject to State laws until they become a portion of the population of the State.

Passenger Cases, 7 How. 454

Effect of Clause on Slavery

The foreign slave trade with this country was left to each State to legislate for until 1808. The framers of the Constitution secured a right in it to prohibit the slave trade into the United States after 1808, with an implied power to prohibit it at once from being carried on abroad by American citizens, and left slavery itself to be abolished here entirely and as fast as each State should find it expedient and secure to itself.

U. S. *v.* Libby, 1 Woodb. & M. (U. S.), 221.

Clause 2.—HABEAS CORPUS.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Definition of Writ

The writ of *habeas corpus* is a writ of right, but not a writ of course, since cause must be shown for its issuance. The object of the writ is to determine whether a prisoner can be lawfully detained, to protect against unwarranted encroachments upon personal liberty; and the proceedings under the writ are to be deemed civil rather than criminal, in which the civil right of personal liberty is asserted.

Yates *v.* Lansing, 5 Johns. (N. Y.) 282.
Ex parte Watkins, 3 Pet. 201.
Ekiu *v.* U. S., 142 U. S. 662.
In re Bonner, 151 U. S. 259.
Farnsworth *v.* Montana, 129 U. S. 113.
See also—
Ex parte Milligan, 4 Wall. 110.
Ex parte Terry, 128 U. S. 301.
In re Boardman, 169 U. S. 43.
Ex parte Tom Tong, 108 U. S. 560.
Kurtz *v.* Moffitt, 115 U. S. 494.

"*Habeas corpus*" is a generic term and includes every species of that writ, but when used as in this clause "the writ of *habeas corpus*" means the writ *ad subjiciendum*, and if as so used it had a well-known meaning, the framers of the Constitution must have had reference to that meaning.

Ex parte Bollman, 4 Cranch 95.
Calder *v.* Bull, 3 Dall. 386.
See also—
The *Santissima Trinidad*, 7 Wheat. 305.
Martin *v.* Mott, 12 Wheat. 29.
Luther *v.* Borden, 7 How. 1.
Fleming *v.* Page, 9 How. 615.
Watson *v.* Mercer, 8 Pet. 88.
Carpenter *v.* Pennsylvania, 17 How. 456.
U. S. *v.* Wilson, 7 Pet. 150.

The writ of *habeas corpus*, as authorized by the Constitution, is the prerogative writ known to the common law to obtain the liberation of those who may be imprisoned without sufficient

cause, and it is in the nature of a writ of error to examine the legality of the commitment.

Ex parte Watkins, 3 Pet. 193.

For proceeding by *habeas corpus*, as a suit, see Holmes *v.* Jennison (14 Pet. 540).

Application to Aliens

The guaranty of the privilege of *habeas corpus* is not violated by act of February 20, 1907, section 3, for deportation of aliens for practicing prostitution within three years after entry, though findings of fact of Department of Commerce and Labor are made conclusive.

Zakonaite *v.* Wolf, 226 U. S. 272.

Suspension of the Privilege

The suspension of the privilege of the writ of *habeas corpus* does not suspend the writ itself. The suspension merely denies to one arrested the privilege of obtaining his liberty by means of the writ; it does not affect the duty of a court to issue the writ, but requires the dismissal of the writ upon its return, without inquiry as to its merits.

Ex parte Milligan, 4 Wall. 130.
Ex parte Vallandingham, 1 Wall. 243.
Ex parte Yerger, 8 Wall. 95.

A distinction is to be drawn between the suspension of the writ under this clause and the *ipso facto* suspension which takes place when martial law actually exists. Martial law is the law of military necessity in the actual presence of war; it finds its justification only where, from actual necessity or civil war, the courts are closed, and it is impossible to administer justice according to law, and its duration is limited by its necessity. In this connection "martial law" must not be confounded with "military law" or with "military government." Military law consists of rules prescribed by Congress for the government of the Army and Navy, and applies only to persons in the military or naval service, while military government is the dominion exercised in war over the territory and inhabitants of an enemy's country upon its conquest and occupation.

U. S. *v.* Diekelman, 92 U. S. 526.
Ex parte Milligan, 4 Wall. 127.
Coleman *v.* Tennessee, 97 U. S. 517.

Power to Suspend Privilege

Under this clause Congress alone has power to authorize the suspension of the privilege of the writ. But direct enactment by Congress is not necessary; the President may be authorized to suspend the privilege when in his judgment the public safety so requires. The power conferred is discretionary, to be exercised upon an opinion of certain facts, and carries also the exclusive power to judge as to the existence of those facts.

Ex parte Bollman, 4 Cranch 75.
Martin *v.* Mott, 12 Wheat. 31.
Luther *v.* Borden, 7 How. 44.

In Ex parte Bollman (4 Cranch 101) Marshal, C. J., incidentally expressed the opinion that the suspension of the writ was a power to be exercised by "the legislature." This *dictum* was long accepted as settling that the Constitution was to be construed as empowering not the President but Congress alone to suspend the privilege of the writ, and was reasserted by Taney, C. J., on circuit at Baltimore. Congress, by an express provision of the act of March 3, 1863, chapter 81, specifically vested in the President the authority, "whenever in his judgment the public safety might require it, to suspend the privilege of the writ in any case arising in any part of the United States," thus impliedly asserting that the power so to authorize rested in itself alone.

Ex parte Merryman, 17 Fed. Cas. No. 9487.

But see Prigg *v.* Pennsylvania (16 Pet. 619), wherein it was held that:

No express power is given to Congress to secure this invaluable right in the nonenumerated cases, or to suspend the writ in cases of rebellion or invasion. And yet it would be difficult to say, since this great writ of liberty is usually provided for by the ordinary functions of legislation, and can be effectually provided for only in this way, that it ought not to be deemed by necessary implication, within the scope of the legislative power of Congress.

In McCall *v.* McDowell (15 Fed. Cas. No. 8673) it is held that Congress is the exclusive judge of "when in cases of rebellion or invasion" the public safety requires the suspension of "the privilege of the writ of *habeas corpus*."

This section is not restrictive of State but only of National action.

Gasquet *v.* Lapeyre, 242 U. S. 367.

Authority of President

The President was authorized by act of Congress to suspend the privilege of the writ of habeas corpus whenever in his judgment the public safety required; and he did, by proclamation, bearing date of the 15th of September, 1863, reciting, among other things, the authority of this statute, suspend it.

Ex parte Milligan, 4 Wall. 115.

Jurisdiction of Courts

In Ex parte Kearney (7 Wheat. 38) it was said:

This court has authority to issue a habeas corpus where a person is imprisoned under the warrant or order of any other court of the United States, but has no appellate jurisdiction in criminal cases, confided to it by the laws of the United States, and can not revise the judgments of the circuit courts by writ of error in any case where a party has been convicted of a public offense.

This clause is not a grant of power to the Federal courts, but a prohibition against its suspension by Congress or the Executive.

Ex parte Caldwell, 138 Fed. 487. Order reversed in Carfer *v.* Caldwell, 200 U. S. 293.

The suspension of the writ, under the Constitution, in times of rebellion, does not confer on a State court the power to enjoin against an arrest.

Kneedler *v.* Lane, 45 Pa. 238.

In Ableman *v.* Booth (21 How. 506) it was held that a prisoner of the United States could not be released on *habeas corpus* by a State.

Defendant, having been tried for a misdemeanor before one Federal judge and having consented to the substitution of another who received the verdict and imposed sentence of imprisonment, sought *habeas corpus* upon the ground that the substitution was contrary to the constitutional provision for trial of all crimes by jury. Held, that the error, if any, did not go to the jurisdiction of the court or render the judgment void, and that review should have been sought by writ of error.

United States *v.* Valante, 264 U. S. 563.

In the Federal courts a discharge on *habeas corpus* of a prisoner confined under a criminal accusation or conviction is granted only in the exercise of a sound judicial discretion.

Goto *v.* Lane, 265 U. S. 393.

The strict doctrine of *res judicata* does not apply to *habeas corpus*. Salinger *v.* Loisel, 265 U. S. 224. But the court, in its sound discretion, may dismiss a petition for *habeas corpus* because of a prior refusal, when the ground for the second application was set up, with another, in the first, and when the evidence to support it then was withheld without excuse for use on a second attempt if the first failed. Where unreasonable delays have been caused by resort to *habeas corpus* proceedings, the mandate of this court will issue forthwith.

Wong Doo *v.* United States, 265 U. S. 239.

Clause 3.[1]—ATTAINDER AND EX POST FACTO LAWS.

No Bill of Attainder or ex post facto Law shall be passed.

Bill of Attainder

This is a legislative act which inflicts punishment without a judicial trial. The term embraces bills of pains and penalties, and legislation is none the less objectionable in that it merely confiscates property; it may affect the life of an individual, or confiscate his property, or both. The framers of the Constitution must be deemed to have had in mind the meaning commonly given to the term "bill of attainder" at that time.

Cummings *v.* Missouri, 4 Wall. 323.
Drehman *v.* Stifle, 8 Wall. 601.
Fletcher *v.* Peck, 6 Cranch 138.
Calder *v.* Bull, 3 Dall. 386.

[1] See also, Art. I, sec. 10, imposing a similar inhibition on the States, p. 269.

See also—
Ex parte Garland, 4 Wall. 377.
U. S. *v.* Wilson, 7 Pet. 150.
Watson *v.* Mercer, 8 Pet. 88.
U. S. *v.* Coffee, 8 Cranch 411.

The object of this clause is to secure the rights of citizens against deprivation for past conduct by legislative enactment in any form however disguised. Laws requiring the assumption of a test oath and operating to exclude a citizen from any profession or avocation for past conduct are objectionable as bills of pains and penalties prohibited by this clause; e. g., laws excluding attorneys who participated in the War of the Rebellion from the right to practice.

Cummings *v.* Missouri, 4 Wall. 277, 323.
Ex parte Garland, 4 Wall. 377.
Pierce *v.* Carskadon, 16 Wall. 239.
Klinger *v.* Missouri, 13 Wall. 257.

Ex Post Facto Laws

Definition

Every law that makes an act done before the passage of the law criminal, which was innocent when done, or that aggravates a crime or makes it greater than it was when committed, or that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed, or that alters the rules of evidence, permitting less or different evidence to convict a person of an offense committed prior to its passage, is an *ex post facto* law and within the prohibition of this clause.

Calder *v.* Bull, 3 Dall. 393.
Fletcher *v.* Peck, 6 Cranch 138.
Watson *v.* Mercer, 8 Pet. 110.
Ex parte Garland, 4 Wall. 336.
Kring *v.* Missouri, 107 U. S. 232.
See also—
Medley, petitioner, 134 U. S. 160, with dissenting opinion by Justices Brewer and Bradley.
Ogden *v.* Saunders, 12 Wheat. 266.
Locke *v.* New Orleans, 4 Wall. 173.
Baltimore, etc., R. Co. *v.* Nesbit, 10 How. 395.
Carpenter *v.* Pennsylvania, 17 How. 456.
In re Sawyer, 124 U. S. 219.

While, however, the constitutional inhibition is aimed at criminal laws, it can not be evaded by giving civil form to that which is in substance criminal; e. g., a requirement that persons claiming certain civil rights take a test oath denying participation in the rebellion.

Cummings *v.* Missouri, 4 Wall. 328.
Burgess *v.* Salmon, 97 U. S. 385.

The debates in the Federal Convention upon the Constitution show that the term "*ex post facto* laws" was understood in a restricted sense relating to criminal cases only.

Bugajewitz *v.* Adams, 228 U. S. 585.
Johannessen *v.* U. S., 225 U. S. 227.

In Ex parte Garland (4 Wall. 333) the act of Congress of January 24, 1865, prohibiting all persons from practice before the Federal courts without taking a specified test oath as to participation in the Rebellion was held unconstitutional under this clause and also as an interference with the pardoning power of the President.

Change in Judicial District

A statute which includes the place of the commission of the alleged offense within a particular judicial district, and subjects the accused to trial in that district rather than in the court of some other judicial district established by the Government against whose laws the offense was committed, is not an *ex post facto* law.

Cook *v.* U. S., 138 U. S. 183.

Change in Number of Jurors

The provision in the constitution of Utah providing for the trial in courts of general jurisdiction of criminal cases, not capital, by a jury composed of eight persons, is *ex post facto* in its application to felonies committed before the Territory became a State, because, in respect of such crimes, the Constitution of the United States gave the accused, at the time of the commission of his offense, the right to be tried by a jury of 12 persons, and made it impossible to deprive him of his liberty except by the unanimous verdict of such a jury.

Thompson *v.* Utah, 170 U. S. 355.

Hallock *v.* U. S., 185 Fed. 417, writ of certiorari denied in 220 U. S. 613.

U. S. *v.* Haskell, 169 Fed. 449.

Removing Disabilities of Witnesses

Statutes which simply enlarge the class of persons who may be competent to testify in criminal cases are not *ex post facto* in their application to prosecutions for crimes committed prior to their passage.

Hopt *v.* Utah, 110 U. S. 589.

Admission and Exclusion of Aliens

This clause does not apply to provisions like those of act of February 20, 1907, section 3, amended March 26, 1910, section 2, for deportation of alien women practicing prostitution after entry into United States.

Bugajewitz *v.* Adams, 228 U. S. 585.

See also—

Mahler *v.* Eby, 264 U. S. 32.

The Chinese exclusion act, providing that it shall be unlawful for any Chinese laborer, who shall at any time heretofore have been a resident within the United States and who shall have departed therefrom and shall not have returned before the passage of this act, to return to this country, is not unconstitutional as being an *ex post facto* law since there is nothing in the nature of an offense in a Chinaman's departing from this country.

In re Chae Chan Ping, 36 Fed. 431. Order affirmed in Chae Chan Ping *v.* U. S., 130 U. S. 581.

Naturalization Laws

Retrospective features of act of Congress authorizing impeachment of naturalization certificates fraudulently procured do not invalidate that section under this clause.

Johannessen *v.* U. S., 225 U. S. 227.

Retroactive Validation of Legislative Proceedings

The legislature may validate retrospectively any proceedings which it could have authorized in advance; and it is immaterial that such legislation may operate to divest an individual of a right of action existing in his favor, or subject him to a liability which did not exist originally. In a large class of cases this is the paramount object of such legislation.

The Exchange Bank Cases, 21 Fed. 99. Judgment affirmed in Williams *v.* Albany, 122 U. S. 154.

Clause 4.[1]—DIRECT TAXES.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

In General

It was with the idea that the power of direct taxation should be exercised only in cases of "absolute necessity" that the framers of the Constitution inserted this clause limiting the taxing power of Congress. The original draft of the instrument did not contain the words "or other direct tax"; this phrase was inserted to avoid any possible misconstruction which would narrow the intention.

Pollock *v.* Farmers, etc., Co., 157 U. S. 429.
Documentary His. Const., Vol. III, pp. 578, 747.

A capitation tax is a direct tax, but the term "direct taxes" comprehends also taxes on land and taxes on personal property by general valuation. A tax upon property holders in respect of their estates, real or personal, or of the rents therefrom, which can not be avoided, is a direct tax, while a tax paid primarily by persons who can shift the burden upon others, or who are not under compulsion to pay, is an indirect tax.

Hylton *v.* U. S., 3 Dall. 171.
Veazie Bank *v.* Fenno, 8 Wall. 547.
Loughborough *v.* Blake, 5 Wheat. 317.
Springer *v.* U. S., 102 U. S. 602.
License Taxes Cases, 5 Wall. 471.
De Treville *v.* Smalls, 98 U. S. 517.

A tax levied on tobacco by a war-revenue act "in lieu of the tax now imposed by law" is not a direct tax within this clause; nor is a tax imposed by such act direct because required to be measured by gross receipts.

Patton *v.* Brady, 184 U. S. 608.
Spreckles, etc., Co. *v.* McClain, 113 Fed. 244.

[1] See also Art. I, sec. 2, cl. 3, p. 65; Art. I, sec. 8, cl. 1, p. 74; and Amend. 16, p. 745.

The direct tax laid by the act of August 5, 1861, did not create any liability on the part of the States in which the lands taxed were situated to pay the tax.

U. S. *v.* Louisiana, 123 U. S. 32.

Excises Not Direct Taxes

A tax upon the business of insurance companies is not a direct tax, but a duty or excise, and is valid; so also as to a tax upon bank circulation; a stamp tax imposed upon board of trade sales, and a tax upon alien passengers from a foreign port. A tax upon carriages is also an excise.

Pacific Ins. Co. *v.* Soule, 7 Wall. 446.
Veazie Bank *v.* Fenno, 8 Wall. 547.
Nicol *v.* Ames, 173 U. S. 523.
Hylton *v.* U. S., 3 Dall. 175.
Central Bank *v.* U. S., 137 U. S. 364.
Thomas *v.* U. S., 192 U. S. 363.
Flint *v.* Stone Tracy Co., 220 U. S. 107.

An inheritance tax is not laid upon property but is an excise duty upon the succession or devolution and so is not a direct tax, and the fact that such a tax is made a lien upon the property transmitted does not change its character, that being merely an appropriate means of enforcing its collection.

Scholey *v.* Rew, 23 Wall. 346.
Knowlton *v.* Moore, 178 U. S. 83.
Murdock *v.* Ward, 178 U. S. 146.

Income Taxes

A tax upon the income of real or personal property is as much a direct tax as a tax imposed upon the property itself.

Pollock *v.* Farmers', etc., Co., 157 U. S. 573, overruling Scholey *v.* Rew, 23 Wall. 347, and Springer *v.* U. S., 102 U. S. 602, on this point, and holding the act of Congress of August 27, 1894, unconstitutional as levying a direct tax without apportionment.

See also—

Pollock *v.* Farmers', etc., Co., 158 U. S. 601, Justices Harlan, Brown, Jackson and White dissenting.

The sixteenth amendment qualifies this clause, but "incomes" as used in that amendment does not include stock dividends, and any taxation of them must be in accordance with this clause and clause 3 of section 2 of Article I.

Eisner *v.* Macomber, 252 U. S. 189.

Clause 5.—EXPORT DUTIES.

No Tax or Duty shall be laid on Articles exported from any State.

In General

This clause is the only positive prohibition against taxation by Congress. Congress has full power to tax everything except exports, the clauses requiring uniformity and apportionment not being strictly limitations upon power, but merely prescribing modes of exercise. The object of this prohibition was to

preclude interference with exports by Congress. A stamp tax imposed on foreign bills of lading is in effect a tax or duty upon exports, and so void; but an act requiring the stamping of all packages of tobacco intended for export, the object being to prevent fraud, is not a tax upon exports.

License Tax Cases, 5 Wall. 471.
Hylton *v.* U. S., 3 Dall. 171.
Almy *v.* California, 24 How. 174.
Pace *v.* Burgess, 92 U. S. 376.
See also—
Lane County *v.* Oregon, 7 Wall. 77.
Veazie Bank *v.* Fenno, 8 Wall. 540.
Pollock *v.* Farmers', etc., Co., 157 U. S. 557.
Fairbank *v.* U. S., 181 U. S. 283.

The word "exported" as used in this clause applies only to goods exported to a foreign country.

Dooley *v.* U. S., 183 U. S. 154, which also see as to tax on goods imported into Porto Rico from the United States.

The prohibition in this clause, as well as that in clause 2 of section 10 of this article, has reference to the imposition of duties on goods by reason or because of their exportation. But a general tax laid on all property alike and not levied on goods in course of exportation nor because of their intended exportation is not within the prohibition.

Turpin *v.* Burgess, 117 U. S. 507.
Cornell *v.* Coyne, 192 U. S. 419.

A sale of goods made in this country to a commission merchant for a foreign consignee, for the sole purpose of export, and consummated only when the goods, addressed to the foreign consignee, are delivered by the vendor to the exporting carrier, is a step in their exportation and, under this clause, can not be taxed by the United States, even though the law under which the tax is imposed is a general one, not aimed specially at exports.

Spalding & Bros. *v.* Edwards, 262 U. S. 66.

Tax on Distilled Spirits

The tax on distilled spirits may be imposed under the act of Congress upon spirits intended for exportation.

Thompson *v.* U. S., 142 U. S. 471.

Stamp Taxes

A stamp tax imposed under the war revenue act of June 13, 1898, upon charter parties for the carriage of cargo from State ports to foreign ports is a tax on articles exported from any State, and the act held unconstitutional.

U. S. *v.* Hvoslef, 237 U. S. 1.

A stamp tax on a policy of marine insurance on goods carried from a domestic port to a foreign country is a tax on exports and therefore invalid.

Thames, etc., Ins. Co. *v.* U. S., 237 U. S. 19.

Stamp tax on ship manifests held void as a tax on exports.

New York, etc., S. S. Co. *v.* U. S., 125 Fed. 320; judgment reversed in 200 U. S. 488.

Customs Duties

The provision of the joint resolution for the annexation of the Hawaiian Islands of July 7, 1898, which retained in force the same customs duties between such islands and ports of the United States as formerly held constitutional.

Crossman *v.* U. S., 105 Fed. 608; judgment reversed in Goetze *v.* U. S., 182 U. S. 221.

Income Tax on Export Business

Section 2 of the act of October 3, 1913, subjecting every domestic corporation to an annual tax upon its entire income arising or accruing from all sources during preceding calendar year, is not invalid under this clause in so far as it applies to income derived by a corporation from its export trade.

Peck & Co. *v.* Lowe, 247 U. S. 165.

Clause 6.—PREFERENCES TO PORTS.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

The prohibition of this clause is a limitation on the powers of Congress and not upon those of the States, the object being to restrain Congress from fostering or oppressing one port or the commerce of one State and thus destroying equality and uniformity as to levies of contribution from foreign commerce.

Munn *v.* Illinois, 94 U. S. 135.
Morgan *v.* Louisiana, 118 U. S. 467.
Johnson *v.* Chicago, etc., Co., 119 U. S. 400.
Passenger Cases, 7 How. 283.

Discrimination as between States is what is prohibited, not discrimination as between individual ports, and Congress is not forbidden to make a port in one State a port of entry, while refusing to do so as to a port in another State; nor does the clause operate to prevent incidental advantages to the ports of one State resulting from commerce legislation or to acts directly benefiting the ports of one State and only incidentally injuring those of another.

Pennsylvania *v.* Wheeling, etc., Brdg. Co., 18 How. 435.
South Carolina *v.* Georgia, 93 U. S. 13.

Alaska held to be not a State within the meaning of this clause.

Alaska *v.* Troy, 258 U. S. 101.

This clause was intended to prevent vessels bound to or from a port in any State being obliged to enter, clear, or pay duties

in any State other than that to or from which they should be proceeding.

U. S. *v. The William*, 28 Fed. Cas. No. 16700.
See also—
Cooley *v.* Philadelphia, 12 How. 313.

This clause does not deny the power to Congress to permit the several States to adopt pilotage regulations.

Thompson *v.* Darden, 198 U. S. 315.

Clause 7.—APPROPRIATIONS.[1]

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

In General

Under this clause, money once in the Treasury can only be withdrawn pursuant to an express appropriation by Congress; but the restriction operates only upon the Treasury Department and does not restrain Congress from involving the Government in liabilities to pay money to any extent.

Knote *v.* U. S., 95 U. S. 154.
Collins *v.* U. S., 14 Ct. Cl. 568; 15 Ct. Cl. 22.

While Congress has the power to prevent the payment of claims by refusing to appropriate money therefor, an appropriation of a less amount than is specified by a law fixing compensation does not abrogate or suspend such law nor impair the validity of the claim, nor does the fact that the appropriation out of which the claim should have been paid has lapsed constitute a defense to the claim itself. Where an appropriation is insufficient to satisfy a claim, the claimant's remedy is by appeal to Congress. An act appropriating less than the amount recommended by the head of a department to the payment of a claim does not operate as an adoption of the recommendation or a recognition of the amount therein named as due.

Hart's case, 16 Ct. Cl. 459.
U. S. *v.* Langston, 118 U. S. 394.
Dunwoody *v.* U. S., 143 U. S. 586.
Nutt *v.* U. S., 125 U. S. 655.

Congress may recognize and pay a claim of an equitable, moral, or honorary nature, and whether the facts are such as to authorize relief is for Congress alone to determine, and where Congress directs a specific sum to be paid to a certain person,

[1] See Art. I, sec. 8, cl. 12, as to limitation on appropriations for the Army, p. 233.

neither the Secretary of the Treasury nor any court has discretion to determine whether the person is entitled to receive it.

U. S. *v.* Realty Co., 163 U. S. 439.
U. S. *v.* Price, 116 U. S. 43.
Allen *v.* Smith, 173 U. S. 393.

A pardon by the President can not restore the proceeds of confiscated property already paid into the United States Treasury, and restoration can only be made by action of Congress.

Knote *v.* U. S., 95 U. S. 154.
Austin *v.* U. S., 155 U. S. 427.

Where a claim has been audited, allowed, and paid in the usual manner, the Government can not reclaim the money without showing that payment was induced by fraud or by a mistake of fact.

U. S. *v.* Olmstead, 118 Fed. 433.

To Pay the Debts of the United States

Having power under section 8 of Article I to pay the debts of the United States, it follows that Congress has power when the money is raised to appropriate it to the same object.

U. S. *v.* Realty Co., 163 U. S. 440.

No officer, however high, not even the President, is empowered to pay the debts of the United States generally when presented to them.

Reeside *v.* Walker, 11 How. 272.

Proceeds of Confiscated Property

A general pardon and amnesty granted by the President will not entitle one receiving their benefits to the proceeds of his property previously condemned and sold under a confiscation act after such proceeds have been paid into the Treasury, as money once in the Treasury can only be withdrawn by an appropriation by law.

Knote *v.* U. S., 95 U. S. 154.
But see—
Rice *v.* U. S., 122 U. S. 611.

In U. S. *v.* Johnston (124 U. S. 236) it was held that the money received from captured and abandoned property, under the construction given by the Treasury Department, is not subject to this provision where the proceeds were merely deposited with the Treasurer and not technically covered into the Treasury, the money involved in the *Rice* case being held a trust fund.

Clause 8.—TITLES OF NOBILITY.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title,

of any kind whatever, from any King, Prince, or foreign State.

Congress and the States are equally prohibited from granting any title of nobility.

Legal Tender Cases, 110 U. S. 421.

This prohibition goes to the competency of Congress to grant any title of nobility, and limits its power in legislating for territory acquired by the United States, such as Porto Rico, as well as in legislating for the States.

Downes *v.* Bidwell, 182 U. S. 244.

The original draft of the Constitution contained only the prohibition against grants of titles of nobility. The insertion of the remainder of the clause was prompted by a recognition of the "necessity of preserving foreign ministers and other officers of the United States independent of external influence." A United States marshal can not during his tenure of office represent a foreign nation as its commercial agent.

Documentary Hist. Const., Vol. III, pp. 450 and 600.
6 Op. Atty. Gen. 409.

Section 10.—POWERS DENIED TO THE STATES.

Clause 1.—CONTRACTS, TREATIES, ETC.[1]

No state shall enter into any treaty, alliance, or confederation;[2] grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

In General

This section contains an enumeration of the powers that are denied to the States; that is, the powers that were voluntarily given up by the States when the Constitution was made and adopted. It has been said that:[3]

The Constitution confers no express power upon the States collectively or individually. It confers power upon Congress and each branch thereof, upon the President, and the judiciary, but none upon the States. The reason is apparent. The States, before the adoption of the Constitution, were separate and independent governments. Each exercised the power of a distinct sovereignty, except as it was limited by the narrow provisions of the Articles of Confederation. When the Constitution was adopted, each State surrendered most of its power and conferred it upon the General Government, which was the United States. There was no occasion therefore to enlarge the powers of the States, but on the contrary they were lessened; hence, there is no power conferred upon them by the

[1] This clause is usually referred to as the "Contracts Clause."
[2] This inhibition is repeated in clause 3 of this section, p. 369.
[3] Watson on the Constitution, p. 763. See also Art. II, sec. 1, cl. 2, p. 380.

Constitution. The nearest approach to it * * * is the *duty* required of each State to appoint electors.

Treaty, Alliance, or Confederation

Nature of State Governments

A State, in the sense of the Constitution, is a political community of free citizens occupying definite territory and organized under a government sanctioned and limited by a written constitution, and the union of such States, under the Constitution forms the United States. With respect to the General Government the States are not sovereign powers but members of the Union, whose Constitution is supreme, but as respects their local government they are sovereign within their own limits and foreign as to each other. The sovereignty of the States in their relations with one another, however, is qualified; they have surrendered their treaty-making powers to the General Government, and they can not declare war or authorize reprisals on other States.

Texas *v.* White, 7 Wall. 721.
Fletcher *v.* Peck, 6 Cranch 136.
Buckner *v.* Finley, 2 Pet. 591.
Mahon *v.* Justice, 127 U. S. 705.
Holmes *v.* Jennison, 14 Pet. 571.
See also—
U. S. Bank *v.* Daniel, 12 Pet. 54.
U. S. *v.* Rauscher, 119 U. S. 412.

There is nothing in the Constitution which forbids the legislature of a State to exercise judicial functions.

Satterlee *v.* Matthewson, 2 Pet. 380.

The prohibitions raise an obligation on the States not to legislate on the subjects specified.

Dodge *v.* Woolsey, 18 How. 349.

Surrender of Treaty-Making Power

By this clause and section 2 of Article II the States have surrendered the treaty-making power to the General Government and have vested it in the President and Senate.

In re Parrott, 1 Fed. 481.

No power under the Government can make "any treaty, alliance, or confederation" entered into by a State valid or dispense with the constitutional prohibition.

Rhode Island *v.* Massachusetts, 12 Pet. 724.

The Confederate States of America

By reason of this clause the confederation formed by Virginia and other States, called the Confederate States of America, could not be recognized as having any legal existence.

Williams *v.* Bruffy, 96 U. S. 183.
Lamar *v.* Micou, 112 U. S. 476.

The States had no right to secede from the Union, and at no time were they out of the Union. Their attempt to separate themselves from the Union did not destroy their identity as States nor free them from the binding force of the United States Constitution; their rights under the Constitution were suspended, not destroyed; but their constitutional duties and obligations remained the same.

White *v.* Hart, 13 Wall. 651.
Keith *v.* Clark, 97 U. S. 461.
Texas *v.* White, 7 Wall. 725.
Daniels *v.* Tearney, 102 U. S. 418.
Taylor *v.* Thomas, 22 Wall. 490.

For other cases concerning the Confederate States of America see—

Mauran *v.* Alliance Ins. Co., 6 Wall. 13.
White *v.* Cannon, 6 Wall. 450.
Hickman *v.* Jones, 9 Wall. 200.
Dewing *v.* Perdicaries, 96 U. S. 195.
Sprott *v.* U. S., 20 Wall. 464.
U. S. *v.* Koehler, 9 Wall. 86.
Thorington *v.* Smith, 8 Wall. 10.
Ford *v.* Surget, 97 U. S. 605.
Underhill *v.* Hernandez, 168 U. S. 253.
Hanauer *v.* Woodruff, 15 Wall. 442.
Hanauer *v.* Doane, 12 Wall. 345.
Clark *v.* Keith, 106 U. S. 465.

While the Government of the United States is not bound to recognize as valid any action by a State engaged in rebellion, yet laws were upheld so far as they did not tend to impair the supremacy of the National Government or the constitutional rights of citizens, for example, statutes necessary for the protection of persons and property; laws for the regulation of business transactions; statutes regulating the creation of corporations; and statutes in aid of railroad corporations.

Horn *v.* Lockhardt, 17 Wall. 580.
Huntington *v.* Texas, 16 Wall. 413.
Texas *v.* White, 7 Wall. 733.
Thomas *v.* Richmond, 12 Wall. 357.
U. S. *v.* Insurance Cos., 22 Wall. 103.
Davis *v.* Gray, 16 Wall. 225.

Letters of Marque and Reprisal

To grant letters of marque and reprisal would lead directly to war, the power of declaring which is expressly given to Congress.

Barron *v.* Baltimore, 7 Pet. 249.

No State shall * * * emit bills of credit

In General

This clause of the Constitution first came before the Supreme Court in the case of Craig *v.* Missouri (4 Pet. 425), in which it was held that the State of Missouri could not issue the so-called

"certificates of indebtedness" in issue in that case, and the court said:

> Bills of credit signify a paper medium, intended to circulate between individuals, and between Government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing, and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States, and which deeply affected the interest and prosperity of all, the people declared in their Constitution that no State should emit bills of credit. If the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of any paper medium by a State government for the purpose of common circulation.

State Bank Issues

Bills issued by State banks are not bills of credit, although the State guarantees their payment. The fact that the State is the sole stockholder in the bank, whose officers are elected by the State legislature, is immaterial; a State, by becoming interested with others in a corporation, or by acquiring all the capital stock, does not impart to the corporation any of its attributes of sovereignty.

Briscoe *v.* Bank of Kentucky, 11 Pet. 318.
Curran *v.* Arkansas, 15 How. 318.
Darrington *v.* Bank of Alabama, 13 How. 16.
See also—
Wesley *v.* Eells, 177 U. S. 370.
Veazie Bank *v.* Fenno, 8 Wall. 552.
Nathan *v.* Louisiana, 8 How. 81.
Davis *v.* Gray, 16 Wall. 232.

To come within the prohibition a bill must be issued by a State, on its faith and credit, and be designed to circulate as money; but this clause does not forbid the States to execute instruments binding themselves to pay money at a future day for services rendered or for money borrowed.

Briscoe *v.* Bank of Kentucky, 11 Pet. 318.
Craig *v.* Missouri, 4 Pet. 433.
See also—
Virginia Coupon Cases, 114 U. S. 270.
Chaffin *v.* Taylor, 116 U. S. 567.
Woodruff *v.* Mississippi, 162 U. S. 299.
Houston, etc., R. Co. *v.* Texas, 177 U. S. 83.
Woodruff *v.* Trapnall, 10 How. 205.
Byrne *v.* Missouri, 8 Pet. 40.

Power of Congress to Emit Bills of Credit

The several States are prohibited from emitting bills of credit, but no intention can be inferred from this to deny to Congress this power.

Legal Tender Case, 110 U. S. 446.
Barings *v.* Dabney, 19 Wall. 10.
Hagood *v.* Southern, 117 U. S. 52.

No State shall coin money; or make anything but gold and silver coin a tender in payment of debts

In General

The act of coining money, being prohibited, can not be done by a State, either directly or indirectly. The term "money" means gold, silver, and copper coins, and to "coin money" is to mold into form a metallic substance of intrinsic value. The power to coin money was denied to the States and vested in Congress in order to create and preserve the uniformity and purity of a standard value, and to prevent the irregularities and confusion incident to different views of policy on the part of the several States.

Briscoe *v.* Bank of Kentucky, 11 Pet. 318.
Maynard *v.* Newman, 1 Nev. 271.
Griswold *v.* Hepburn, 63 Ky. 20.
U. S. *v.* Marigold, 9 How. 567.
Edwards *v.* Kearzey, 96 U. S. 606.
Woodruff *v.* Trapnall, 10 How. 206.
U. S. Bank *v.* Bank of Georgia, 10 Wheat. 347.
Paup *v.* Drew, 10 How. 217.

Necessity for Uniformity of Standard

The clause declares that "no State shall coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts." These prohibitions, associated with the powers granted to Congress "to coin money, to regulate the value thereof, and of foreign coin," most obviously constitutes members of the same family, being upon the same subject and governed by the same policy. This policy was to provide a fixed and uniform standard of value throughout the United States by which the commercial and other dealings between the citizens thereof should be regulated.

Ogden *v.* Saunders, 12 Wheat. 265.
See also—
Gwin *v.* Breedlove, 2 How. 38.
Veazie Bank *v.* Fenno, 8 Wall. 552.
Legal Tender Case, 110 U. S. 446.
Barron *v.* Baltimore, 7 Pet. 249.
Griffin *v.* Thompson, 2 How. 244.

A contract to pay a certain sum of money is legally performed if paid in currency, which is lawful money at the time payment becomes due or is demanded, and therefore act of Congress of February 25, 1862, making Treasury notes a legal tender is valid, although applied to obligations existing before that time.

Legal Tender Cases, 12 Wall. 457.

The laws of Oregon provided that "the sheriff shall pay over to the county treasurer the full amount of the State and school taxes in gold and silver coin," and that "the several county treasurers shall pay over to the State treasurer the State tax in gold and silver coin." It is certainly a legitimate, if not a neces-

sary inference, that these taxes were required to be collected in coin. It was so held.

Lane County *v.* Oregon, 7 Wall. 74.
See also—
Bronson *v.* Rodes, 7 Wall. 229.
Butler *v.* Horwitz, 7 Wall. 258.

Statute allowing State banks to pay checks by exchange when maker does not expressly direct otherwise does not violate this clause.

Farmers Bank *v.* Federal Reserve Bank, 262 U. S. 649.

No State Shall Pass Any Bill of Attainder [1]

A bill of attainder is a legislative act which inflicts punishment without a judicial trial. The Constitution deals with substance, not form, and any statute depriving a citizen of rights for past misconduct is void, however disguised. The term "bill of attainder" embraces bills of pains and penalties, and comprehends laws confiscating property as well as those affecting the life of an individual. Any deprivation or suspension of an inalienable right is a punishment.

Cummings *v.* Missouri, 4 Wall. 277.
Drehman *v.* Stifle, 8 Wall. 601.
Fletcher *v.* Peck, 6 Cranch 138.
Ogden *v.* Saunders, 12 Wheat. 266.

The so-called test-oath acts contravene this clause in excluding certain persons from practicing their professions for previous acts of rebellion, or depriving such persons of the right to a rehearing in civil suits or denying to nonresidents the right to appear and defend without taking the prescribed oath.

Cummings *v.* Missouri, 4 Wall. 323.
Pierce *v.* Carskadon, 16 Wall. 239.
Klinger *v.* Missouri, 13 Wall. 257.

This clause does not forbid a State to prescribe the necessary qualifications to entitle a person to practice his profession, or to exclude ex-convicts from the practice of medicine. The fact that such statutes are applicable in terms to persons who had previously enjoyed the right to pursue their avocations does not render them objectionable.

Dent *v.* West Virginia, 129 U. S. 125.
Hawker *v.* New York, 170 U. S. 198.

See also Watson on the Constitution, p. 735, reciting the history of a bill of attainder passed by the Legislature of Virginia.

No State Shall Pass Any Ex Post Facto Law [2]

Definition

In general.—An *ex post facto* law is a law enacted after an offense has been committed and which, in relation to it or its consequences, alters the situation of the accused to his disad-

[1] See also Art. I, sec. 9, cl. 3, p. 260, for inhibition on Congress.
[2] For prohibition applicable to Congress see Art. I, sec. 9, cl. 3, p. 260.

vantage. The term embraces every law that makes an act done before the passage of the law, and innocent when done, criminal; every law that aggravates a crime or changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed; every law that alters the legal rules of evidence, and authorizes conviction upon less or different testimony than was required by law at the time the offense was committed.

Kring *v.* Missouri, 107 U. S. 235.
Calder *v.* Bull, 3 Dall. 390.
Thompson *v.* Utah, 170 U. S. 351.
Watson *v.* Mercer, 8 Pet. 110.
Ex parte Garland, 4 Wall. 366.
Burgess *v.* Salmon, 97 U. S. 382.
Fletcher *v.* Peck, 6 Cranch 138.
Cummings *v.* Missouri, 4 Wall. 330.
Medley, petitioner, 134 U. S. 171.
Duncan *v.* Missouri, 152 U. S. 382.
Pierce *v.* Carskadon, 16 Wall. 239.
Gibson *v.* Mississippi, 162 U. S. 589.
Malloy *v.* South Carolina, 237 U. S. 180.

Decisions of courts.—This prohibition, as its terms indicate, is directed against legislative action only, and does not reach erroneous or inconsistent decisions by the courts.

Frank *v.* Mangum, 237 U. S. 309.
Ross *v.* Oregon, 227 U. S. 150.

As applied to civil proceedings.—This clause relates to penal and criminal proceedings which impose punishments and forfeitures, and not to civil proceedings which affect private rights retrospectively.

Watson *v.* Mercer, 8 Pet. 110.
See also—
Kentucky Union Co. *v.* Kentucky, 219 U. S. 140.
Florentine *v.* Barton, 2 Wall. 210.
Carpenter *v.* Pennsylvania, 17 How. 456.
In re Sawyer, 124 U. S. 219.
Locke *v.* New Orleans, 4 Wall. 173.
Bankers Trust Co. *v.* Blodgett, 260 U. S. 647.
Lehmann *v.* Board of Accountancy, 263 U. S. 394.

A statute ordering a new trial of an inquisition to ascertain damages on condemnation of land for a railroad is not assailable as an *ex post facto* law.

Baltimore, etc., R. Co. *v.* Nesbit, 10 How. 402.

Law mitigating punishment.—A statute which mitigates the rigor of the law in force at the time the crime was committed can not be regarded as *ex post facto* with reference to that crime.

Rooney *v.* North Dakota, 196 U. S. 324.

No deprivation of substantial rights permissible.—It is well settled that the accused is not entitled, of right, to be tried in the exact mode, in all respects, that may be prescribed at the time of the commission of said crime, and that he is not entitled of right to be tried before the court having jurisdiction of the crime when

committed, but that the legislature may prescribe a new and different mode of procedure and vest jurisdiction in a new and different court. But it is equally well settled that the law-making power can not, in the exercise of the authority to regulate the mode of procedure whereby and to determine the court wherein a crime shall be prosecuted, deprive the accused of any substantial rights which he possessed when the crime was committed.

Thompson *v.* Utah, 170 U. S. 343.

Statutes Relating to Offenses

Repeal of statute without saving clause.—When a statute has been repealed without making any provision, by way of saving or otherwise, by which the punishment therein prescribed, or any other, could be legally visited upon those who had previously been guilty of that offense, the effect of the repeal is to leave no sanction or punishment for that crime which is applicable to such previous offenders, and a person accused of such an offense can not be convicted under a substitute statute.

State *v.* Daley, 29 Conn. 272.

Carrying out agreement made before enactment of statute.—When a corporation is charged with a violation of a State antitrust act, and it appears that since the act was passed it has been carrying out agreements entered into it by its predecessor before the passage of the act, the statute is not an *ex post facto* law.

Waters-Pierce Oil Co. *v.* Texas, 212 U. S. 86.

Increasing punishment for subsequent offenses.—State statute providing that "whoever has been twice convicted of crime, sentenced and committed to prison, in this or any other State, or once in this and once at least in any other State, for terms of not less than three years each, shall upon conviction of a felony committed in this State after the passage of this act be deemed to be an habitual criminal and shall be punished by imprisonment in the State prison for 25 years," is not objectionable as an *ex post facto* law. The punishment is for the new crime only, but is the heavier if the offender is an habitual criminal.

McDonald *v.* Massachusetts, 180 U. S. 311.
Iowa *v.* Jones, 128 Fed. 626.

Statutes Relating to Remedies

Affecting jurisdiction of the courts.—The prescribing of different modes of procedure and the abolition of courts and the creation of new ones, leaving untouched all the substantial protections with which the existing law surrounds the person accused of crime, are not considered within the constitutional prohibition.

Duncan *v.* Missouri, 152 U. S. 382.

Changing place of trial.—A law changing the place of trial from one county to another county in the same district, or even to a different district from that in which the offense was committed or the indictment found, is not an *ex post facto* law, though passed subsequent to the commission of the offense or the finding of the indictment.

Gut *v.* State, 9 Wall. 37.

Grand and petit jurors.—A change in the law regulating the selection of grand and petit jurors is not *ex post facto* as to a crime theretofore committed.

Gibson v. Mississippi, 162 U. S. 588.

Regulating appeals.—A law granting the right of appeal to the State is not an *ex post facto* law within the meaning of the Constitution.

Mallett *v.* North Carolina, 181 U. S. 593.

No State Shall Pass Any Law Impairing the Obligation of Contracts

Leading Cases

Dartmouth College *v.* Woodward (4 Wheat. 518), in connection with which see Evans's Leading Cases on American Constitutional Law, p. 170, note.
Charles River Bridge *v.* Warren Bridge, 11 Pet. 420.
Sturges *v.* Crowninshield, 4 Wheat. 122.
Fertilizing Co. *v.* Hyde Park, 97 U. S. 659.
Laramie County v. Albany County, 92 U. S. 307.
Skaneateles Water Works *v.* Skaneateles, 184 U. S. 354.
Joplin *v.* Light Co., 191 U. S. 150.
Railroad Commission Cases, 116 U. S. 307.
Ogden *v.* Saunders, 12 Wheat. 213.
Railroad Co. *v.* Rock, 4 Wall. 177.
Eustis *v.* Bolles, 150 U. S. 361.
Gelpcke *v.* Dubuque, 1 Wall. 175.
Fletcher *v.* Peck, 6 Cranch 87.
Beers *v.* Arkansas, 20 How. 527.
New Jersey *v.* Wilson, 7 Cranch 164.
Satterlee *v.* Matthewson, 2 Pet. 380.
Providence Bank *v.* Billings, 4 Pet. 514.
Woodruff *v.* Trapnall, 10 How. 190.
McGahey *v.* Virginia, 135 U. S. 662.
Salt Company *v.* East Saginaw, 13 Wall. 373.
Fisk *v.* Jefferson, 116 U. S. 131.
Pennsylvania College Cases, 13 Wall. 190.
Beer Company *v.* Massachusetts, 97 U. S. 25.
Georgia R., etc., Co. *v.* Smith, 128 U. S. 174.
East Hartford *v.* Hartford Brdg. Co., 10 How. 511.
Morley v. Lake Shore, etc., R. Co., 146 U. S. 162.
McCracken *v.* Hayward, 2 How. 608.

As to particular contracts protected by the Federal Constitution against impairment by the States, see—

Church *v.* Kelsey, 121 U. S. 282 (a State constitution).
Fletcher *v.* Peck, 6 Cranch 87 (a conveyance).

New Jersey *v.* Wilson, 7 Cranch 164.
Providence Bank *v.* Billings, 4 Pet. 514.
State Bank of Ohio *v.* Knoop, 16 How. 369 (exemption from taxation).
Green *v.* Biddle, 8 Wheat. 1 (contract between States for the benefit of individuals).
The Binghampton Bridge, 3 Wall. 51.
New Orleans Water Co. *v.* Rivers, 115 U. S. 674.
Vicksburg *v.* Waterworks Co., 202 U. S. 453 (exclusive franchises).
Los Angeles *v.* City Water Co., 177 U. S. 558 (contracts as to rates of public service companies).
Louisiana *v.* New Orleans, 109 U. S. 285 (judgment for damages collectible in an action of contract).
Illinois Cent. R. Co. *v.* Illinois, 146 U. S. 387 (how far governmental powers can be made the subject of irrepealable contracts).

By the obligation of a contract is meant the means which at the time of its creation the law affords for its enforcement.

Nelson *v.* St. Martin's Parish, 111 U. S. 716.

Any form of State law which impairs the obligation of a contract is invalid.

Murray *v.* Charleston, 96 U. S. 432.
New Orleans Waterworks Co. *v.* Louisiana, etc., Co., 125 U. S. 18.
Grand Trunk, etc., R. Co. *v.* Indiana, 221 U. S. 400.
Ross *v.* Oregon, 227 U. S. 150.

The restraint operates only upon a State's legislative power, not upon the decisions of its courts.

Calder *v.* Bull, 3 Dall. 386.
Fletcher *v.* Peck, 6 Cranch 87.
Commercial Bank *v.* Buckingham, 5 How. 317.
Central Land Co. *v.* Laidley, 159 U. S. 103.
Moore-Mansfield, etc., Co. *v.* Electrical, etc., Co., 234 U. S. 619.
Gelpcke *v.* Dubuque, 1 Wall. 175.
Pine Grove *v.* Talcott, 19 Wall. 666.
Douglas *v.* Pike, 101 U. S. 677.
Louisiana *v.* Pilsbury, 105 U. S. 278.

When a State gives effect to later legislation on the ground that the earlier legislation did not create a contract, it is for the Federal Supreme Court to determine whether or not a contract existed.

Russell *v.* Sebastian, 233 U. S. 195.
Louisiana R., etc., Co. *v.* New Orleans, 235 U. S. 164.

As to what constitutes an impairment of the obligation of a contract, see—

Livingston *v.* Moore, 7 Pet. 469.
Walker v. Whitehead, 16 Wall. 314.
Tennessee *v.* Sneed, 96 U. S. 69.
New Orleans, etc., R. Co. *v.* New Orleans, 157 U. S. 219.
Gunn *v.* Barry, 15 Wall. 610.
Edwards *v.* Kearzey, 96 U. S. 595.
Bronson *v.* Kinzie, 1 How. 311.

Barnitz *v.* Beverly, 163 U. S. 118 (statutes altering mortgagor's right of redemption).
Penniman's Case, 103 U. S. 714 (abolition of imprisonment for debt).
Wheeler *v.* Jackson, 137 U. S. 245 (alteration in statute of limitations).

Definition of Contracts

In general.—For the purposes of this clause the term "contracts" embraces agreements between States, between States and individuals, between States and corporations, between a State and the United States. Corporations are within the protection of the clause to the same extent as individuals. Mere social compacts between a State and its citizens are not comprehended by the prohibition; it protects contracts relating to rights which are not governmental.

Green *v.* Biddle, 8 Wheat. 1.
Providence Bank *v.* Billings, 4 Pet. 560.
Dartmouth College *v.* Woodward, 4 Wheat. 627.
McGee *v.* Mathis, 4 Wall. 155.
Billings *v.* Hall, 7 Cal. 1.
Stone *v.* Mississippi, 101 U. S. 820.
See also—
Achison *v.* Huddleson, 12 How. 298.
State Bank of Ohio *v.* Knoop, 16 How. 389.
West River Brdg. Co. *v.* Dix, 6 How. 531.
New Jersey *v.* Wilson, 7 Cranch 164.
Pennsylvania *v.* Wheeling, etc., Bridge Co., 13 How. 560.
Searight *v.* Stokes, 3 How. 151.
Neil *v.* Ohio, 3 How. 720.
Von Hoffman *v.* Quincy, 4 Wall. 550.
Hall *v.* Wisconsin, 103 U. S. 8.
Bridge Proprietors *v.* Hoboken Co., 1 Wall. 146.
Miller *v.* State, 15 Wall. 488.

This prohibition includes and protects contracts which respect property or some object of value and which confer rights that may be asserted in a court of justice. It is not necessary that a contract be executory; the clause includes executed contracts as well. Nor is it necessary that the contract be express; implied contracts as well are protected; whether the contract relates to real or personal estate, is executed or executory, by parol or under seal, the Constitution preserves it inviolate as to its obligations.

Fletcher *v.* Peck, 6 Cranch 136.
Farrington *v.* Tennessee, 95 U. S. 683.
Butler *v.* Pennsylvania, 10 How. 402.
Fisk *v.* Jefferson Police Jury, 116 U. S. 131.

The term "contract" presupposes a valid contract, one imposing obligations under general principles of law and not void under the constitution and laws of a State or entered into without authority of the party sought to be charged. A contract to be protected from impairment must be founded upon good con-

sideration. Before the Supreme Court can determine whether a State law is repugnant to the obligation clause it must appear that a legal contract is involved, and for this purpose the bare averment of a contract is insufficient. The *ultra vires* contract of a corporation is not within the protection of this clause. A State constitution is not a contract within the meaning of that term as here used.

New Orleans *v.* Water Works Co., 142 U. S. 88.
Pearsall *v.* Great Northern R. Co., 161 U. S. 667.
Douglas *v.* Kentucky, 168 U. S. 500.
City R. Co. *v.* Citizens' R. Co., 166 U. S. 564.
Church *v.* Kelsey, 121 U. S. 283.
Griffith *v.* Connecticut, 218 U. S. 563.

If a contract, when made, was valid by the constitution and laws of the State, as then expounded by the highest authority whose duty it was to administer them, no subsequent action by the legislature or judiciary can impair its obligation.

Havemeyer *v.* Iowa County, 3 Wall. 303.
Zane *v.* Hamilton County, 189 U. S. 381.
Pacific, etc., R. Co. *v.* Los Angeles, 194 U. S. 118.

Necessity for mutual assent.—The term "contract" is used in the Constitution in its ordinary sense as signifying the agreement of two or more minds for considerations proceeding from one to the other to do or not to do certain acts. Mutual assent to its terms is of its very essence.

Louisiana *v.* New Orleans, 109 U. S. 288.
Durkee *v.* Board of Liquidation, 103 U. S. 646.

Where a corporation is by its charter authorized to engage in a business affecting the public interest, and given exclusive privileges which tend to establish a monopoly, such grant of exclusive privileges does not become a contract or vested right, so as to be protected from impairment by the State or Federal Constitution, until the grantee has, to say the least, begun preparations or made some expenditures to perform the service to the public which constitutes the consideration for the grant of the privileges.

Capital City Light, etc., Co. *v.* Tallahassee, 28 So. 810; affirmed in 186 U. S. 401.

Necessity for consideration.—To make a contract which can not be impaired by subsequent legislation there is the same necessity for a consideration that there would be if it were a contract between private parties. If the law be a mere offer of a bounty, it may be withdrawn at any time notwithstanding the recipients of such bounty may have incurred expenses upon the faith of such offer.

Grand Lodge, etc., *v.* New Orleans, 166 U. S. 146.
Durkee *v.* Board of Liquidation, 103 U. S. 646.

If it be a mere nude pact, a bare promise to allow a certain thing to be done, it will be construed as a revocable license.

Pearsall *v.* Great Northern R. Co., 161 U. S. 667.

A grant of exemption is never to be considered as a mere gratuity—a simple gift from the legislature. No such intent to throw away the revenues of the State or to create arbitrary discriminations between the holders of property can be imputed. A consideration is presumed to exist.

Illinois Cent. R. Co. *v.* Decatur, 147 U. S. 201.

There is no necessity of looking for the consideration for a legislative contract outside of the objects for which the corporation was created. These objects were deemed by the legislature to be beneficial to the community, and this benefit constitutes the consideration for the contract, and no other is required to support it.

Home of Friendless *v.* Rouse, 8 Wall. 437.

While an issue of new mortgage bonds by a street railway can not properly be termed a legal consideration for an ordinance extending the term of an exclusive franchise, since the negotiation of the new loan was neither a benefit to the city nor a detriment to the railroad company, yet the subsequent negotiation of such a loan operates against the city by way of estoppel. The continued operation of the road may itself be regarded a sufficient consideration for the extension of the franchise.

City R. Co. *v.* Citizens' R. Co., 166 U. S. 566.

Interest.—Interest on a principal sum may be stipulated for in the contract itself, either to run from the date of the contract until it matures or until payment is made; and its payment in such a case is as much a part of the obligation of contract as the principal, and equally within the protection of the Constitution.

Morley *v.* Lake Shore, etc., R. Co., 146 U. S. 168.
Missouri & Ark. Co. *v.* Sebastian County, 249 U. S. 170.
Connecticut Mut. Life Ins. Co. *v.* Cushman, 108 U. S. 51.
Griffith *v.* Connecticut, 218 U. S. 563.

See also—

Koshkonong *v.* Burton, 104 U. S. 679, as to implied contract for interest.
Sturges *v.* Crowninshield, 4 Wheat. 207, and Ewell *v.* Daggs, 108 U. S. 148, as to usury laws.

Implied contracts.—The protection of the constitutional provision may be invoked against impairing the obligation of implied contracts as well as express contracts.

Stewart *v.* Jefferson Police Jury, 116 U. S. 135.

See also—

Bryan *v.* Board of Education, 151 U. S. 639, for a case where the court would not imply a contract in the absence of express provisions.

Executory and executed contracts.—The constitutional prohibition applies alike to both executory and executed contracts, by whomsoever made.

Farrington *v.* Tennessee, 95 U. S. 683.

See also—

Green *v.* Biddle, 8 Wheat. 92; and as to the distinction between executed and executory contracts of States, see Pearsall *v.* Great Northern R. Co., 161 U. S. 672.

Contract right to easements.—An owner of real property abutting on a street in New York City, who derived his title from the grantor to the city, in trust for a public highway, of the strip of land constituting the street, and acquired such title when the State courts had decided that one so situated had a contract right to easements of light, air, and access, which could not be taken from him without compensation by the construction of an elevated railroad in the adjoining street, is protected against impairment of his easements by the substitution by a railroad company, at the subsequent command of the State, of an elevated structure in lieu of its surface roadbed, which occupied the street at the time of his purchase, and cut off his access to the street.

Muhlker *v.* New York, etc., R. Co., 197 U. S. 544 (per Justices McKenna, Harlan, Brewer, and Day; Justice Brown concurring in the result).

A purely statutory right of a landowner to recover damages resulting to his property from a change in the grade of a street upon which it abuts is not a right of contract within the meaning of this clause.

Crane *v.* Hahlo, 258 U. S. 142.

Judgments as contracts.—A judgment is not itself a contract in the sense in which that word is here used whether it is based upon contract or tort. The term "contract" signifies as agreement of the minds, for mutual consideration, to do or not to do certain acts, and a judgment cannot be said to possess any of these essentials. So where the law at the time a judgment is rendered prescribes a rate of interest which judgments shall bear, a law changing the rate is not void as applied to that judgment.

Morley *v.* Lake Shore, etc., R. Co., 146 U. S. 162.
Freeland *v.* Williams, 131 U. S. 416.
Louisiana *v.* New Orleans, 109 U. S. 288.
McCullough *v.* Virginia, 172 U. S. 102.
McFaddin *v.* Evans-Snider-Buel Co., 185 U. S. 505.

The refusal of a State court to treat a decree of dismissal in the Federal court as conclusive of a point left open did not impair the obligation of that decree as a contract.

Swift *v.* McPherson, 232 U. S. 51.

A judgment for the amount due upon a contract does not terminate its obligation. The debt remains contractual in charac-

ter, and its payment is as much within the obligation of the contract after the judgment as it was before.

Lamb *v.* Powder River, etc., Co., 132 Fed. 440.
Hoyt Metal Co. *v.* Atwood, 289 Fed. 453.

The confession of a judgment is a contract on the side of the defendant, who thus acknowledges or assumes upon himself a debt, which may be made the ground of an action, but on the side of the plaintiff the necessity of resorting to certain means of enforcing that judgment is not an obligation arising out of contract, but one imposed upon him by the laws of the country.

Livingston *v.* Moore, 7 Pet. 549.

See also—

Garrison *v.* New York, 21 Wall. 203, as to fiction that judgment is a contract of record.

It was held in Stanford *v.* Coram (28 Mont. 288, 72 Pac. 655) that a judgment is not a contract within the meaning of the constitutional provision because it lacked the element of consent.

A judgment is only a contract because it is evidence of a debt or obligation on the part of the defendant due to the plaintiff. The judgment itself presupposes, and is founded on, some antecedent obligation or contract, and is only a higher evidence of that contract because it now has the sanction of the judicial determination of its validity and amount by a court of law. The essential nature and character of the contract remains unchanged; and, in deciding how far it may be affected by legislation, reference must be had mainly to the original contract.

Blount *v.* Windley, 95 U. S. 176.

The right to reimbursement for damages caused by a mob or riotous assemblage of people is not founded upon any contract between a city and the sufferers. Its liability for damages is created by a law of the legislature and can be withdrawn or limited at its pleasure, and its character is not at all changed by the fact that the amount of loss, in pecuniary estimation, has been ascertained and established by judgments.

Louisiana *v.* New Orleans, 109 U. S. 287.

Tenure and compensation of public officers.—The appointment to and the tenure of an office created for the public use, and the regulation of the salary affixed to such an office, do not come within the import of the term "contracts." They are functions appropriate to that class of powers and obligations by which governments are enabled, and are called upon, to foster and promote the general good; functions, therefore, which governments can not be presumed to have surrendered.

Butler *v.* Pennsylvania, 10 How. 417.

See also—

Head *v.* Missouri University, 19 Wall. 526, as to the removal of a professor in a State university prior to the expiration of the term for which appointed.

A contract entered into between the governor of a State and an individual, under the authority of a State statute by which the individual entered into the service of the State at a specified compensation for a definite term, does not give to the contractor a public office which the legislature has the right to abolish at pleasure, but is a contract within the purview of this clause.

Hall *v.* Wisconsin, 103 U. S. 5.

See also—

Fisk *v.* Jefferson Police Jury, 116 U. S. 133, as to obligation to pay fixed rate after services rendered.

Missouri *v.* Walker, 125 U. S. 339, as to revocation of appointment before service rendered.

Marriage contracts are not within the prohibition and the legislature is not forbidden to pass laws regulating or annuling the marriage relation, and may make that cause for divorce which was not prescribed at the time a marriage was contracted.

Maynard *v.* Hill, 125 U. S. 190.

Hunt *v.* Hunt, 131 U. S. appendix clxv.

The enactment of a State statute subjecting to an inheritance tax the rights of a surviving wife in the community property does not violate the contract clause, even if such rights, as they existed when the marriage was celebrated, are contractual, so that they may not be essentially changed or modified by subsequent legislation without impairing contract obligations.

Moffitt *v.* Kelly, 218 U. S. 400.

An act exempting the property of married women from liability for debts of the husband is inoperative as to suits by creditors commenced before the passage of the act.

Baker *v.* Kilgore, 145 U. S. 487.

Guardianship.—Although by the general law of Louisiana a father's guardianship of his minor children imports a mortgage on his immovable property in their favor, yet this mortgage does not make such a contract between the guardian to the minor as that the legislature may not, by special statute, authorize the father to sell his property divested of the tacit mortgage, especially where the proceeds are still preserved to the minors by an investment which the statute prescribes.

Lobrano *v.* Nelligan, 9 Wall. 295.

Contracts outside the State.—A State can not prevent its citizens from making any contracts they please outside of the State, nor can State laws operate upon the contracts of its citizens beyond the limits of the State. An obligation derived from the laws of one State can not be impaired by the laws of another, but one State need not give the same legal obligation to a contract as would the State where it was made. So while the *lex loci contractus*, generally speaking, governs in determining the obligation of a contract, contracts *bonos mores*, or against the policy or laws of a State, will not be enforced in its courts not-

withstanding it may have been lawful in the State where it was entered into.

Ogden *v.* Saunders, 12 Wheat. 213.
Lamb *v.* Bowser, 7 Biss. 315.
Lapsley *v.* Brashear, 4 Litt. 47.
Robinson *v.* Campbell, 3 Wheat. 219.
Smith *v.* Union Bank, 5 Pet. 527.
See also—
Boyle *v.* Zacharie, 6 Pet. 348.
Wayman *v.* Southard, 10 Wheat. 48.
Andrews *v.* Pond, 13 Pet. 78.
Bank of Augusta *v.* Earle, 13 Pet. 589.
Teal *v.* Walker, 111 U. S. 242.
Pritchard *v.* Norton, 106 U. S. 137.

Limitation on States' Powers

The prohibition against the passage of laws impairing the obligation of contracts is confined to the States, but it can not be nullified by any congressional act purporting by authorization or ratification to give effect to a State law or constitution in conflict with the Federal Constitution. One of the great objects of the Constitution was to preserve the inviolability of contracts and to secure the observance of good faith in the stipulations of the parties to a contract. But the purpose was to protect rights and not mere incidental advantages derived indirectly from contracts.

Satterlee *v.* Matthewson, 2 Pet. 416.
White *v.* Hart, 13 Wall. 646.
Murray *v.* Charleston, 96 U. S. 449.
Garrison *v.* New York, 21 Wall. 203.
Ochiltree *v.* Railroad, 21 Wall. 253.
See also—
In re Klein, 1 How. 277.
Legal Tender Cases, 12 Wall. 550.
Home Ins. Co. *v.* City Council, 93 U. S. 121.

The United States are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts.

Sinking Fund Cases, 99 U. S. 718.
See also—
Mitchell *v.* Clark, 110 U. S. 643.
Legal Tender Cases, 12 Wall. 529.
Nortz *v.* Miller, 285 Fed. 778.

Executive order declaring void a contract of the Government held a deprivation of property without due process of law.

U. S. Harness Co. *v.* Graham, 288 Fed. 929.

It is true that the prohibition of this clause is not applied in terms to the United States Government.

Congress has express power to enact bankrupt laws, and we do not say that a law made in the execution of any other express power which, incidentally only, impairs the obligation of a contract, can be held to be unconstitutional for that reason. But we think it clear that those who framed and those who adopted the Constitution intended that the spirit of this prohibition should pervade the entire body of legislation, and that

the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we can not doubt that a law not made in pursuance of an express power, which necessarily and in its direct operation impairs the obligation of contracts, is inconsistent with the spirit of the Constitution.

Hepburn *v.* Griswold, 8 Wall. 623.

The power to regulate commerce given to Congress was never intended to be exercised so as to interfere with private contracts not designed at the time they were made to create impediments, and the enforcement of such a contract would not be repugnant to the commercial power of Congress.

Dubuque, etc., R. Co. *v.* Richmond, 19 Wall. 584.
See also—
Water Power Co. *v.* Water Commissioners, 168 U. S. 372.
Great Northern R. Co. *v.* Minnesota, 246 U. S. 434 (care of highway crossings).
Central of Ga. R. Co. *v.* Wright, 248 U. S. 525 (exempting railroad from taxation).

Jurisdiction of Federal Courts

In general.—It is the duty of a Federal court to determine for itself the extent, construction, and validity of the alleged contract, and also to determine whether, as construed by that court, it has been impaired by any subsequent State legislation to which effect has been given by the State court.

Houston, etc., R. Co. *v.* Texas, 177 U. S. 77.
Seton Hall College *v.* South Orange, 242 U. S. 100.
New York Elec., etc., Co. *v.* Empire City, etc., Co., 235 U. S. 179.
Russell *v.* Sebastian, 233 U. S. 195.
Atlantic, etc., R. Co. *v.* Goldsboro, 232 U. S. 548.
Trimble *v.* Seattle, 231 U. S. 683.
Grand Trunk, etc., R. Co. *v.* South Bend, 227 U. S. 544.
Arkansas, etc., R. Co. *v.* Louisiana, etc., R. Co., 218 U. S. 431.
Great Northern R. Co. *v.* Minnesota, 216 U. S. 206.
Northern Pac. R. Co. *v.* Duluth, 208 U. S. 583.
Jetton *v.* University of the South, 208 U. S. 489.
Sullivan *v.* Texas, 207 U. S. 416.
Tampa Water Works Co. *v.* Tampa, 199 U. S. 241.
Louisville, etc., R. Co. *v.* Palmes, 109 U. S. 256.
Memphis Gas Light Co. *v.* Shelby County, 109 U. S. 399.
Civil Rights Cases, 109 U. S. 12.
Wright *v.* Nagle, 101 U. S. 791.
Delmas *v.* Merchants', etc., Ins. Co., 14 Wall. 668.
Rogers *v.* Alabama, 192 U. S. 230.
Citizens' Bank *v.* Parker, 192 U. S. 85.
Capital City Light, etc., Co. *v.* Tallahassee, 186 U. S. 401.
St. Paul Gas Light Co. *v.* St. Paul, 181 U. S. 147.
Yazoo, etc., R. Co. *v* Adams, 180 U. S. 15.
Walsh *v.* Columbus, etc., R. Co., 176 U. S. 475.
Citizens' Sav. Bank *v.* Owensboro, 173 U. S. 644.
McCullough *v.* Virginia, 172 U. S. 122.
Chicago, etc., R. Co. *v.* Nebraska, 170 U. S. 68.
Douglas *v.* Kentucky, 168 U. S. 502.
Mobile, etc., R. Co. *v.* Tennessee, 153 U. S. 493.
Vicksburg, etc., R. Co. *v.* Dennis, 116 U. S. 667.

In Detroit United Rys. *v.* Michigan (242 U. S. 238) it was said:

> Where this court is called upon in the exercise of its jurisdiction to decide whether State legislation impairs the obligation of a contract, we are required to determine upon our independent judgment these questions: (1) Was there a contract? (2) If so, what obligation arose from it? and (3) Has that obligation been impaired by subsequent legislation?

Construction of statutes and constitution by State court.—While it is undoubtedly the general rule of this court to accept the construction placed by the courts of a State upon its statutes and constitution, yet one exception to this rule has always been recognized, and that is in reference to the matter of contracts alleged to have been impaired.

McCullough *v.* Virginia, 172 U. S. 109.

See also—

Butz *v.* Muscatine, 8 Wall. 582.

State Bank of Ohio *v.* Knoop, 16 How. 391.

Jefferson Branch Bank *v.* Skelly, 1 Black 443.

Where the State constitution necessarily becomes a part of a contract made by a State legislature which is said to be impaired by subsequent legislation, the United States Supreme Court will determine for itself the nature and extent of the constitutional limitation of the contract, independently of the construction put upon the same by the supreme court of the State.

University *v.* People, 99 U. S. 323.

Where a contract is claimed to arise from a State law, and it is held below that a subsequent statute has repealed the alleged contract, and effect is thereby given to the subsequent law, the mere question whether the alleged contract has been repealed by the subsequent law is a State and not a Federal question.

Northern Cent. R. Co. *v.* Maryland, 187 U. S. 266.

State court's construction in case of doubt.—When the jurisdiction of the United States Supreme Court is invoked because of the asserted impairment of contract rights arising from the effect given to subsequent legislation it is the duty of the court to exercise independent judgment as to the nature and scope of the contract. Nevertheless, when the contract which is alleged to have been impaired arises from a State statute, for the sake of harmony and to avoid confusion the Federal courts will lean toward an agreement of views with the State courts if the question seems to them balanced with doubt.

Board of Liquidation *v.* Louisiana, 179 U. S. 622.

See also—

Seton Hall College *v.* South Orange, 242 U. S. 100.

Interborough Transit Co. *v.* Sohmer, 237 U. S. 276.

Murray *v.* Pocatello, 226 U. S. 318.

Mead *v.* Portland, 200 U. S. 148.

Tampa Water Works Co. *v.* Tampa, 199 U. S. 241.

Burgess *v.* Seligman, 107 U. S. 20.

Stearns *v.* Minnesota, 179 U. S. 233.

Duluth, etc., R. Co. *v.* St. Louis County, 179 U. S. 302.

The opinion of the highest court of a State that a State statute denies authority to municipal corporations to make contracts concluding the State from the future exercise of its legislative power to fix the rates which may be charged by public-service corporations will be followed by the United States Supreme Court.

Milwaukee Elec. R., etc., Co. *v.* Wisconsin, 238 U. S. 174.

See also—

Southern Wisconsin R. Co. *v.* Madison, 240 U. S. 457.
Waggoner *v.* Flack, 188 U. S. 600.
Wilson *v.* Standefer, 184 U. S. 411.
Taylor *v.* Ypsilanti, 105 U. S. 71.
Ennis Waterworks *v.* Ennis, 233 U. S. 652.
Great Southern Hotel Co. *v.* Jones, 193 U. S. 532.
Gulf, etc., R. Co. *v.* Hewes, 183 U. S. 68.
Warburton *v.* White, 176 U. S. 484.
Young *v.* Clarendon, 132 U. S. 340.
Powers *v.* Detroit, etc., R. Co., 201 U. S. 543.
Turner *v.* Wilkes County, 173 U. S. 463.

In determining what effect has been given to the later statute the Supreme Court has said that it is not limited to the mere consideration of the language of the opinion of the State court.

Louisiana R., etc., Co. *v.* New Orleans, 235 U. S. 164.

In Wicomico County *v.* Bancroft (203 U. S. 112), it was held:

Previous decisions of this court have settled the proposition that whether such exemption has been in fact repealed by a subsequent State statute is a question of State law in which the decisions of the highest courts of the State, in the absence of a contract, are binding; and that it is only where the exemption is irrepealable, thus constituting a contract, that it becomes the duty of this court to decide for itself whether the subsequent act did or did not impair the obligation of the contract.

See also—

Mercantile Trust, etc., Co. *v.* Columbus, 203 U. S. 311.

As to jurisdiction in equity, see Cleveland *v.* Cleveland City R. Co. (194 U. S. 531).

Unless the intention clearly and strongly appears and is manifested in appropriate words, a statute will always be given a construction that will make it operate prospectively where to do otherwise would materially change existing rights.

Southwestern Coal, etc., Co. *v.* McBride, 185 U. S. 499.

The Obligation

The obligation of a contract is the law which binds the parties to perform their agreement; the law in force at the time the contract is made and which enters into and becomes a part of the contract. It is that duty to perform the contract which is recognized and enforced by law; it depends upon the terms of the contract and the means which the law in existence at the time affords for its enforcement, and consists of that right or power over his will or actions which a party confers on another, and includes everything within its object and scope. The obligation contemplated by this clause is a valid and subsisting,

and not a contingent or speculative, obligation. It does not inhere and consist in the contract itself, but in the law applicable to the contract. Laws relating to the validity, construction, discharge, and enforcement of the contract constitute the obligation and are a part of the contract.

Sturges *v.* Crowninshield, 4 Wheat. 197.
Curran *v.* Arkansas, 15 How. 319.
Murray *v.* Charleston, 96 U. S. 448.
Bedford *v.* Eastern Bldg., etc., Assn., 181 U. S. 241.
Connecticut Mut. Life Ins. Co. *v.* Cushman, 108 U. S. 65.
Ochiltree *v.* Iowa R., etc., Co., 21 Wall. 252.

It is a law which impairs the obligation of contracts, and not the contract itself, which is interdicted. The obligation of a contract is the law which binds the parties to perform their agreement.

Ogden *v.* Saunders, 12 Wheat. 257.
Walker *v.* Whitehead, 16 Wall. 314.
Von Hoffman *v.* Quincy, 4 Wall. 535.

The laws which exist at the time and place of the making of a contract and where it is to be performed enter into and form a part of it. This embraces those laws which affect its validity, construction, discharge, and enforcement.

Walker *v.* Whitehead, 16 Wall. 314.
Edwards *v.* Kearzey, 96 U. S. 601.
Von Hoffman *v.* Quincy, 4 Wall. 550.
West River Brdg. Co. *v.* Dix, 6 How. 532.
McCracken *v.* Hayward, 2 How. 612.
Bronson *v.* Kinzie, 1 How. 315.

Contracts made after the enactment of a statute are made subject to it, and impose only such obligations and create only such property as the law permits.

Abilene Nat. Bank *v.* Dolley, 228 U. S. 1.
Chicago, etc., R. Co. *v.* Cram, 228 U. S. 70.

It is the municipal law of the State, whether that be written or unwritten, which is emphatically the law of the contract made within the State and must govern it throughout wherever its performance is sought to be enforced.

Ogden *v.* Saunders, 12 Wheat. 259.

By the obligation of the contract is meant the means which at the time of its creation the law affords for its enforcement.

Nelson *v.* St. Martin's Parish, 111 U. S. 720.
Louisiana *v.* New Orleans, 102 U. S. 206.
Walker *v.* Whitehead, 16 Wall. 314.

In Edwards *v.* Kearzey (96 U. S. 600) the court said:

The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it the contract, as such, in the view of the law ceases to be and falls into the class of those "imperfect obligations," as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable.

Impairment

Definition.—To impair the obligation of a contract means to alter it so as to make the contract more beneficial to one party and less to the other than by its terms it purports to be. A law releasing any part of the obligation of a contract impairs it to that extent and is unconstitutional. So also as to a law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from stipulations in the contract, or a law which imposes new conditions or dispenses with those expressed.

Bailey *v.* Gentry, 1 Mo. 116.
Sturges *v.* Crowninshield, 4 Wheat. 197.
Green *v.* Biddle, 8 Wheat. 84.
Edwards *v.* Kearzey, 96 U. S. 595.
McGahey *v.* Virginia, 135 U. S. 693.
Farmers', etc., Bank *v.* Smith, 6 Wheat. 131.
New Jersey *v.* Wilson, 7 Cranch 164.
Oshkosh Waterworks Co. *v.* Oshkosh, 187 U. S. 437.

Acts declaring void contracts which were valid when made impair contract obligations and are void, and statutes declaring that a certain hitherto good consideration shall be void are inoperative as to prior contracts; for example, a statute declaring that contracts are void the consideration of which was slaves, or a statute declaring the consideration of Confederate notes, bonds, or money to be void. Verbal contracts, valid when made, can not be invalidated by a subsequent act requiring such contracts to be evidenced by writing.

Mays *v.* Williams, 27 Ala. 267.
McNealy *v.* Gregory, 13 Fla. 417.
Osborn *v.* Nicholson, 13 Wall. 654.
Delmas v. Insurance Co., 14 Wall. 661.
Von Hoffman *v.* Quincy, 4 Wall. 535.
Boyce *v.* Tabb, 18 Wall. 546.
Hanauer *v.* Woodruff, 15 Wall. 439.
Confederate Note Case, 19 Wall. 548.

A law which alters the terms of a contract by imposing new conditions, or dispensing with those expressed, is a law which impairs its obligation.

State Tax on Foreign-Held Bonds, 15 Wall. 320.

In the nature of things it can not be said that subsequent rights which are so limited as to prevent them in any degree from interfering with prior ones can as a matter of legal conclusion be held to impair such previous contract rights.

Board of Liquidation *v.* Louisiana, 179 U. S. 622.

Degree of impairment immaterial.—In Farrington *v.* Tennessee (95 U. S. 683) the court said that—

> the amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of the court to redress the wrong.

See also—

Walker *v.* Whitehead, 16 Wall. 314.
Planter's Bank *v.* Sharp, 6 How. 327.
Green *v.* Biddle, 8 Wheat. 84.

For legislation demanded by the public good, however it may retroact on contracts previously made, and enhance the cost and difficulty of performance, or diminish the value of such performance to the other party, there is no restraint in the Federal Constitution so long as the obligation of performance remains in full force.

Curtis *v.* Whitney, 13 Wall. 70.

Under the Constitution the obligation of a contract is not to be impaired at all. It is not a question of degree, manner, or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force; and any deviation by postponement or acceleration of the period of performance, or imposing conditions not expressed, or dispensing with those expressed, is a violation of the obligation. The slightest variation of the obligation impairs it to that extent and is unconstitutional.

Green *v.* Biddle, 8 Wheat. 84.
Sturges *v.* Crowninshield, 4 Wheat. 197.
Antoni *v.* Greenhow, 107 U. S. 797.
McCracken *v.* Hayward, 2 How. 608.
Ogden *v.* Saunders, 12 Wheat. 213.
Pennsylvania *v.* Wheeling, etc., Brdg. Co., 18 How. 433.

Impairment by judicial decision.—In Columbia Ry. *v.* South Carolina, 261 U. S. 236, it was held that "the Constitution affords no protection as against an impairment by judicial decision."

See also—
New Orleans Water Works Co. *v.* Refining Co., 125 U. S. 18.
Louisiana Ry. & Nav. Co. *v.* New Orleans, 235 U. S. 164.
Rooker *v.* Fidelity Trust Co., 261 U. S. 114.

Vested rights.—A State law devesting vested rights violates no constitutional provision where it does not impair the obligation of a contract; it is only when legislation acts upon contracts as distinct from vested rights that the prohibition against impairing the obligation of contracts is infringed. Accordingly, property acquired under a contract may be taken for public use without violating the prohibition, and the taking of a contract under condemnation proceedings does not break its obligation but appropriates it, as it does tangible property, to public uses.

Satterlee *v.* Matthewson, 2 Pet. 413.
Charles River Bridge *v.* Warren Bridge, 11 Pet. 582.
Green *v.* Biddle, 8 Wheat. 89.
Long Island, etc., Co. *v.* Brooklyn, 166 U. S. 691.
Baltimore, etc., R. Co. *v.* Nesbit, 10 How. 401.
See also—
Calder *v.* Bull, 3 Dall. 394.
Fletcher *v.* Peck, 6 Cranch 135.
Bronson *v.* Kinzie, 1 How. 315.
Horst *v.* U. S., 283 Fed. 600.

Act of December 24, 1919, amending War Risk Insurance Act of October 6, 1917, as to parties to whom benefits were to be

paid, though enacted after insured's death, held not to impair obligation of the contract, or defeat vested rights of beneficiary under a certificate containing provisions that the policy was subject to all the provisions of the act and regulations thereunder then in force or thereafter adopted.

Helmholz *v.* Horst, 294 Fed. 417.
McCracken *v.* Hayward, 2 How. 612.
Von Hoffman *v.* Quincy, 4 Wall. 549.
Vanhorne *v.* Dorrance, 2 Dall. 304.
Adirondack R. Co. *v.* New York, 176 U. S. 350.
U. S. *v.* Arredondo, 6 Pet. 733.
Drehman *v.* Stifle, 8 Wall. 603.
Blount *v.* Windley, 95 U. S. 180.

Laws not violating obligation.—A statute which affects the value of a contract does not necessarily impair its obligation; so long as the obligation to perform remains in force legislation which retroacts on previous contracts and enhances the cost and difficulty of performance or diminishes the value of such performance is constitutional. The State may pass laws which will operate to devest antecedent rights if they do not technically impair the obligation of contracts. The legislature may validate past transactions. A law which gives validity to a void contract can not be said to impair the obligation of such contract.

Curtis *v.* Whitney, 13 Wall. 71.
Calder *v.* Bull, 3 Dall. 386.
Leland *v.* Wilkinson, 10 Pet. 294.
Satterlee *v.* Matthewson, 2 Pet. 380.
See also—
Hamilton Gaslight Co. *v.* Hamilton City, 146 U. S. 268.
Watson *v.* Mercer, 8 Pet. 110.
Baltimore, etc., R. Co. *v.* Nesbit, 10 How. 395.
Charles River Brdg. *v.* Warren Brdg., 11 Pet. 420.
Freeland *v.* Williams, 131 U. S. 420.
McFaddin *v.* Evans-Snider-Buel Co., 185 U. S. 513.
Gross *v.* U. S. Mortgage Co., 108 U. S. 477.
Ewell *v.* Daggs, 108 U. S. 149.
Connecticut Mut. Life Ins. Co. *v.* Cushman, 108 U. S. 51.
Jackson *v.* Lamphire, 3 Pet. 280.
Vance *v.* Vance, 108 U. S. 514.

Construction in favor of validity of statute.—Laws of Florida 1913, chapter 6421, section 35, imposing additional license fee upon merchants offering coupons, etc., redeemable in premiums, does not unconstitutionally impair contract obligations, it not affecting sales completed before its enactment.

Rast *v.* Van Deman, etc., Co., 240 U. S. 342.
See also—
Pitney *v.* Washington, 240 U. S. 387.

Who may invoke constitutional question.—Where the legal or equitable rights of a party are not in any way touched and he is in no way injured, he can not be heard to complain of the im-

pairment of the obligation of his contract as a mere abstract proposition.

Hooker *v.* Burr, 194 U. S. 422.
See also—
Walsh *v.* Columbus, etc., R. Co., 176 U. S. 479.
Williams *v.* Eggleston, 170 U. S. 309.
Hagar *v.* Reclamation Dist., 111 U. S. 701.
Williams *v.* Hagood, 98 U. S. 74.

In Board of Liquidation *v.* Louisiana (179 U. S. 622) the contention that as public bodies charged with the performance of ministerial duties both the board of liquidation and the drainage commission of New Orleans had not the capacity to plead that the provisions of the State constitution impaired the obligations of contracts in violation of the constitutional provision, was held foreclosed by the decision of the State court below.

A county court which has incurred indebtedness under legislative sanction is not the party who can raise the question of the constitutionality of a statute so limiting its power of taxation as to impair its power to redeem its obligations.

State *v.* Braxton County Court, 55 S. E. 382, affirmed in Braxton County Court *v.* West Virginia, 208 U. S. 192.

A holder of tax-receivable coupons, who is not a taxpayer, can not maintain a bill in equity against State officers for an injunction restraining the defendants from refusing to accept the coupons in payment of taxes due by any taxpayer to the State.

Marye *v.* Parsons, 114 U. S. 325.

A court of equity can not enjoin the enforcement of a municipal ordinance which it is alleged will impair the obligation of a contract at the suit of one who has only an indirect interest therein.

Davis, etc., Mfg. Co. *v.* Los Angeles, 189 U. S. 219.

Persons entitled to benefit of guaranty.—The parties to a contract are the ones to complain of a breach, and if they are satisfied with the disposition which has been made of it and of all claims under it a third party has no right to insist that it has been broken.

Williams *v.* Eggleston, 170 U. S. 309.

One whose rights are not affected by the period of limitation established by a statute can not be heard to question the constitutionality of such limitation.

Pittsburg Steel Co. *v.* Baltimore Equitable Soc., 226 U. S. 455.

An act repealing a law granting rights to a railroad company on condition of its building its road through certain towns, in default of which it should forfeit a certain sum to the State for the benefit of a particular county, does not impair the obligation of any contract right of such county.

Maryland *v.* Baltimore, etc., R. Co., 3 How. 534.

To the same effect, see—

Hagar *v.* Reclamation Dist., 111 U. S. 701.
St. Louis, etc., R. Co. *v.* Gill, 156 U. S. 649.
Galveston, etc., R. Co. *v.* Texas, 170 U. S. 226.

Street railway franchise.—Increased street railway operating costs and decreased net revenues due to war conditions and to an increased wage scale fixed by the National War Labor Board, though rendering unremunerative the street railway fares fixed by municipal franchise ordinances which, by acceptance, became valid contracts, mutually binding for the 25-year term named therein, do not absolve the street railway company from the obligations of its contract so as to justify it in surrendering its franchises and excuse it from giving service at the rates so fixed, especially where it can not be said that, taking all the years of the term together, the contract will prove unremunerative.

Columbus R. etc., Co. *v.* Columbus, 249 U. S. 399.
Burr *v.* Columbus, 249 U. S. 415.
Milwaukee Elec. R., etc. Co. *v.* Milwaukee, 252 U. S. 100.
Cleveland *v.* Cleveland Elec. R. Co., 201 U. S. 529.

Incompleted contract.—A statute that has the effect of violating or repudiating an incompleted contract previously made with the State does not impair the obligation of a contract. The obligation remains as before and forms the measure of the contractor's right to recover from the State the damages sustained.

Hays *v.* Seattle, 251 U. S. 233.

Imposing conditions on foreign corporations.—State statute requiring corporations incorporated elsewhere to file a copy of their charter with the secretary of state does not impair the obligation of a contract entered into by a corporation on the date the statute was passed, although the statute does not go into operation until a subsequent date.

Diamond Glue Co. *v.* U. S. Glue Co., 187 U. S. 611.
See also—
Bedford *v.* Eastern Bldg., etc., Assn., 181 U. S. 241.
Munday *v.* Wisconsin Trust Co., 252 U. S. 499.
Travis *v.* Yale, etc., Mfg. Co., 252 U. S. 60 (income tax on salaries of employees).
Home Ins. Co. *v.* Augusta, 93 U. S. 116 (annual license tax).
New York, etc., R. Co. *v.* Pennsylvania, 153 U. S. 628 (tax on bonds).
Connecticut, etc., Ins. Co. *v.* Spratley, 172 U. S. 602 (service of process).
Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 28 (forfeiture of permission to do business).
National Council *v.* State Council, 203 U. S. 151 (establishing branch organizations within State).
American Smelting, etc., Co. *v.* Colorado, 204 U. S. 103 (greater license fee for foreign than for domestic corporations).
Chicago, etc., R. Co. *v.* Ludwig, 156 Fed. 152, appeal dismissed in
Ludwig *v.* Chicago, etc., R. Co., 215 U. S. 615 (removal of causes to Federal courts without consent of opposing party).
Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783 decrees affirmed in—
Herndon *v.* Chicago, etc., R. Co., 218 U. S. 135, and
Swanger *v.* Atchison, etc., R. Co., 218 U. S. 159.

Curative statutes.—Contracts are not impaired but confirmed by curative statutes. There is nothing in the Constitution which prohibits the legislature of a State or Territory from exercising judicial functions, nor from passing an act which divests rights vested by law provided its effect be not to impair the obligation of a contract. A statute which declares that a deed shall not be adjudged invalid by reason of any defective acknowledgment is valid.

Randall *v.* Kreiger, 23 Wall. 146.

Watson *v.* Mercer, 8 Pet. 109.

Impairment vel non in sundry instances—*Validating a void contract.*—A law which gives validity to a void contract can not be said to impair the obligation of a contract; as where the supreme court of a State has decided that a contract was void so that the principle of law which had been mentioned did not apply, but the legislature afterwards declared that such contracts were valid.

Satterlee *v.* Matthewson, 2 Pet. 410.

Quieting title to real estate does not impair the obligation of any contract.

Hamilton *v.* Brown, 161 U. S. 263.

Mode of service of process.—A statute which prescribes a mode of serving judicial process upon a railroad company different from that provided for in its charter is not void as impairing the obligation of a contract.

Railroad Co. *v.* Hecht, 95 U. S. 170.

Remedies

Legislative control of remedies in general.—While the obligation of a contract may be impaired by striking at the remedy, a violation of the obligation is not necessarily implied from a reasonable change in the mode of enforcing the contract. The remedy for the enforcement of a contract forms a material part of its obligation, and the existence of a remedy is essential to the value of a contract, but the remedy constitutes no part of the contract itself, and may be changed or modified at the will of the legislature, and this power of the legislature is subject only to the restriction that it can not be so exercised as to take away all remedy upon the contract or impose burdens or restrictions which will materially impair its value.

Mason *v.* Haile, 12 Wheat. 370.
Bronson *v.* Kinzie, 1 How. 311.
Sturges *v.* Crowninshield, 4 Wheat. 200.
Tennessee *v.* Sneed, 96 U. S. 74.

See also—

Woodruff *v.* Trapnall, 10 How. 190.
Hawthorne *v.* Calef, 2 Wall. 10.
Walker *v.* Whitehead, 16 Wall. 314.
Ogden *v.* Saunders, 12 Wheat. 262.
Gunn *v.* Barry, 15 Wall. 623.
Hill *v.* Merchants' Ins. Co., 134 U. S. 527.
Terry *v.* Anderson, 95 U. S. 637.

South Carolina *v.* Gaillard, 101 U. S. 438.
Von Hoffman *v.* Quincy, 4 Wall. 535.
Crawford *v.* Branch Bank of Mobile, 7 How. 279.
Louisiana *v.* Pilsbury, 105 U. S. 301.

The power of the legislature to regulate the remedy and modes of proceeding in relation to past as well as future contracts is subject only to the restriction that it can not be exercised so as to take away all remedy upon the contract, or to impose upon its enforcement new burdens and restrictions which materially impair the value and benefit of the contract.

Tennessee *v.* Sneed, 96 U. S. 69.
Memphis *v.* U. S., 97 U. S. 293.
Oshkosh Waterworks Co. *v.* Oshkosh, 187 U. S. 437.
National Surety Co. *v.* Architectural Co., 226 U. S. 276.

An alteration by law of a remedy to such extent as to materially affect a right vested under a prior contract is unconstitutional.

Curran *v.* Arkansas, 15 How. 304.
Walker *v.* Whitehead, 16 Wall. 314.
Rees *v.* Watertown, 19 Wall. 107.
Edwards *v.* Kearzey, 96 U. S. 595.
Brine *v.* Insurance Co., 96 U. S. 627.
Wolff *v.* New Orleans, 103 U. S. 358.
Antoni *v.* Greenhow, 107 U. S. 769.

Though the remedy for the enforcement of a contract may sometimes enter into the contract itself, when an endeavor is made to change the existing remedy, so that no effective and enforceable one is left, if a remedy is left or provided which is fairly sufficient, the obligations of a contract are not impaired by the taking away of the remedies existing when the contract was entered into.

Waggoner *v.* Flack, 188 U. S. 595.

A statute may give a remedy not already existing, and this notwithstanding the new remedy may be less convenient or more tardy or difficult. If the remedy given be as good as that taken away no contract obligation is impaired.

Freeborn *v.* Smith, 2 Wall. 175.
Bronson *v.* Kinzie, 1 How. 311.
Mason *v.* Haile, 12 Wheat. 370.
Louisiana *v.* New Orleans, 102 U. S. 203.

A State may give an additional and more summary remedy for breach of contract by *mandamus* if it does not thereby enlarge the obligation.

New Orleans, etc., R. Co. *v.* Louisiana, 157 U. S. 219.

The grant of a new remedy by way of review is valid, and the State may provide for new trials and create new tribunals of

review in order to detect fraudulent grants or reverse fraudulent judgments without impairing contract obligations.

Stephens *v.* Cherokee Nation, 174 U. S. 478.
League *v.* De Young, 11 How. 202.
Herman *v.* Phalen, 14 How. 79.
Green *v.* Biddle, 8 Wheat. 1.

An act compelling the acceptance of anything but the stipulated payment impairs the obligation of a contract, and where a creditor is entitled to payment in lawful money the legislature can not deprive him of that right. Where existing law permits the recovery of interest on overdue coupons, a subsequent law declaring interest not recoverable upon interest is inapplicable to such existing contracts; but the discretion exercised by the legislature in prescribing what damages, by way of interest, for delay must be allowed in the payment of judgments is based upon reasons of public policy, and is outside the sphere of private contracts.

Blount *v.* Windley, 95 U. S. 179.
Koshkonong *v.* Burton, 104 U. S. 679.
Morley *v.* Lake Shore, etc., R. Co., 146 U. S. 171.
See also—
Wilson *v.* Standefer, 184 U. S. 409.
Bank of Columbia *v.* Okely, 4 Wheat. 243.
Crawford *v.* Bank of Mobile, 7 How. 282.
Ochiltree *v.* Railroad, 21 Wall. 249.
Fourth Nat. Bank *v.* Francklyn, 120 U. S. 755.
Railroad Co. *v.* Hecht, 95 U. S. 170.

Relation of obligation and remedy.—Remedies for the enforcement of a contract existing at the time of its execution enter into, and form a material part of, the obligation of a contract, which the State may not so change as to impair a substantial right. A statute can no more impair the efficacy of a contract by changing the remedy given for its enforcement than by attacking its validity in any other way.

Von Hoffman *v.* Quincy, 4 Wall. 535.
Walker *v.* Whitehead, 16 Wall. 314.
See also—
Gunn *v.* Barry, 15 Wall. 610.
McCracken *v.* Hayward, 2 How. 612.
Kring *v.* Missouri, 107 U. S. 233.
Bronson *v.* Kinzie, 1 How. 311.
Memphis *v.* U. S., 97 U. S. 295.
Woodruff *v.* Trapnall, 10 How. 190.

State statute giving to parishes and municipal corporations an additional and more summary remedy for enforcing against private corporations contract obligations in relation to the paving, repairing, etc., of any street, bridge, etc., does not affect any substantial right of the other party and is not unconstitutional.

New Orleans, etc., R. Co. *v.* Louisiana, 157 U. S. 219.
Bradley *v.* Lightcap, 195 U. S. 1.
See also—
Livingston *v.* Moore, 7 Pet. 469, and
Red River Valley Bank *v.* Craig, 181 U. S. 548, as to foreclosure of liens.

State insolvency laws—*In general.*—The power of the States to enact insolvency laws is subject to the prohibition against laws impairing the obligation of contracts; such a law purporting to discharge liability on contracts entered into before its passage impairs the obligation of those contracts and is void. In their operation upon residents of the State this is the only restriction upon the power to enact them, and while they can not retroact upon previously contracted debts, such laws providing for discharge from subsequently contracted debts are valid.

Sturges *v.* Crowninshied, 4 Wheat. 196.
Ogden *v.* Saunders, 12 Wheat. 264.
Suydam *v.* Broadnax, 14 Pet. 75.
See also—
Farmers', etc., Bank *v.* Smith, 6 Wheat. 134.
Boyle *v.* Zacharie, 6 Pet. 635.
Cook *v.* Moffatt, 5 How. 295.
Baldwin *v.* Hale, 1 Wall. 223.
Denny *v.* Bennett, 128 U. S. 497.
Gilman *v.* Lockwood, 4 Wall. 411.

A State bankrupt or insolvency law which discharges a debtor from all liability for any debt contracted before such law was passed on his surrendering his property in the manner it prescribes, is void, as it impairs the contract.

Sturges *v.* Crowninshield, 4 Wheat. 122.
Farmers' & Mechanics' Bank *v.* Smith, 6 Wheat. 131.
McMillan *v.* McNeill, 4 Wheat. 212.
Bank of Tennessee *v.* Horn, 17 How. 157.

Insolvent laws are not invalid so far as they discharge the person and after-acquired property of the debtor from liability for any contract made subsequently to their enactment with citizens of the State.

Shaw *v.* Robbins, 12 Wheat. 369, note.
Ogden *v.* Saunders, 12 Wheat. 273.
Boyle *v.* Zacharie, 6 Pet. 643.
Suydam *v.* Broadnax, 14 Pet. 74.
Cook *v.* Moffatt, 5 How. 316.
Denny *v.* Bennett, 128 U. S. 489.
Brown *v.* Smart, 145 U. S. 454.

As to existing debts.—A statute for the relief of insolvent debtors, which discharges a debtor from all liability for debts contracted previous to his discharge on his surrendering his property for the benefit of his creditors, is a law impairing the obligation of contracts, in so far as it attempts to discharge the contract.

Farmers', etc., Bank *v.* Smith, 6 Wheat. 131.

As to subsequent debts.—A State bankrupt or insolvency law which discharges the person and the future acquisitions of the debtor from his liability under a contract entered into in that State after the passage of the act does not impair the obligation of such contract.

Ogden *v.* Saunders, 12 Wheat. 254.
Baldwin *v.* Hale, 1 Wall. 228.

Administration of estates.—A private State statute which authorizes a court to decree, on the petition of an administrator, a private sale of the real estate of a decedent to pay debts, while the general subject is regulated by a general statute, does not infringe any contract.

Florentine *v.* Barton, 2 Wall. 217.

Acts of limitation.—Statutes of limitation affect only the remedy given for the enforcement of contracts and not the merits; they rather establish that certain circumstances shall amount to evidence that a contract has been performed than dispense with its performance. Being part of the remedy, statutes of limitation may be modified by shortening the time prescribed at the will of the legislature, provided a reasonable time is left for the commencement of an action before the bar takes effect. The reasonableness of the time allowed for bringing actions on existing contracts is the true test of the validity of such statutes, and this reasonableness is to be determined in the first instance by the legislature, subject to final determination by the courts whether the legislature has committed palpable error.

Brent *v.* Bank of Washington, 10 Pet. 617.
Sturges *v.* Crowninshield, 4 Wheat. 207.
Jackson *v.* Lamphire, 3 Pet. 290.
McGahey *v.* Virginia, 135 U. S. 705.
Terry *v.* Anderson, 95 U. S. 633.
Parmenter *v.* State, 31 N. E. 1035.
See also—
Townsend *v.* Jemison, 9 How. 413.
Campbell *v.* Holt, 115 U. S. 626.
Hawkins *v.* Barney, 5 Pet. 468.
McCracken *v.* Hayward, 2 How. 613.
Phalen *v.* Virginia, 8 How. 168.
Christmas *v.* Russell, 5 Wall. 290.
Mitchell *v.* Clark, 110 U. S. 643.
Turner *v.* New York, 168 U. S. 94.
McElmoyle *v.* Cohen, 13 Pet. 312.
Bank of Alabama *v.* Dalton, 9 How. 522.
Wilson *v.* Iseminger, 185 U. S. 55.
Koshkonong *v.* Burton, 104 U. S. 675.

To give a statute of limitation, declaring generally that no action, or no action of a certain class, shall be brought except within a certain limited time after it shall have accrued, a literal interpretation and a retrospective operation, so that if an action

accrued more than the limited time before the statute was passed it would have the effect of absolutely barring such action at once, would render it unconstitutional.

Sohn *v.* Waterson, 17 Wall. 599.
See also—
Mills *v.* Scott, 99 U. S. 27;
Vance *v.* Vance, 108 U. S. 514;
Wheeler *v.* Jackson, 137 U. S. 245; and
Gilfillan *v.* Union Canal Co., 109 U. S. 404, as to particular periods of time held reasonable.

Exemption laws—*In general.*—It may be stated as a general rule that laws creating or extending exemptions from attachment or execution impair the obligation of contracts, so far as they relate to debts previously contracted, in that they operate to destroy the remedy. In any case where the exemption is palpably too large and materially affects remedies, it will be declared void.

Gunn *v.* Barry, 15 Wall. 624.
Edwards *v.* Kearzey, 96 U. S. 604.
Kener *v.* La Grange Mills, 231 U. S. 215.

A distinction has been drawn between exemptions of real property and exemptions of personal property, and while the original expressions of this distinction were but *dicta*, it seems now to be established that reasonable exemptions of personal property are valid as to prior debts, the reasonableness of the exemption to be determined by the court in each case.

Bronson *v.* Kinzie, 1 How. 315.
In re Owens, 6 Biss. (U. S.) 432.

Such laws are parts of contracts.—The established construction of this clause requires that statutes exempting property of the debtor from attachment or execution "shall be construed to be parts of all contracts made when they are in existence, and therefore can not be held to impair their obligation."

Denny *v.* Bennett, 128 U. S. 495.
Bronson *v.* Kinzie, 1 How. 321.

Farm implements, mechanics' tools, and furniture.—A statute may "exempt from sale under execution the necessary implements of agriculture, the tools of a mechanic, and articles of necessity in household furniture. * * * Regulations of this description have always been considered in every civilized community as properly belonging to the remedy, to be exercised by every sovereignty according to its own views of policy and humanity."

Von Hoffman *v.* Quincy, 4 Wall. 553.

An act exempting real property from taxation is not, when a mere gratuity, a contract.

West Wisconsin R. Co. *v.* Trempealeau County, 93 U. S. 595.
Welch *v.* Cook, 97 U. S. 541.
Wells *v.* Savannah, 181 U. S. 531.

Stay laws.—Stay laws are void, as they change a term of the contract by postponing the time of payment.

Edwards *v.* Kearzey, 96 U. S. 601.
Daniels *v.* Tearney, 102 U. S. 419.
McCracken *v.* Hayward, 2 How. 608.
Gantly *v.* Ewing, 3 How. 707.
Howard *v.* Bugbee, 24 How. 461.

Mortgage and redemption laws.—The right to redeem according to the laws existing at the time a mortgage is executed constitutes part of the mortgage contract and not part of the remedy merely, and it is a right which inheres in the contract as to both mortgagor and mortgagee. Accordingly, a law giving a right of redemption where none previously existed, or extending the period allowed, so alters the remedy of the creditor as to impair the obligation of an existing mortgage. On the other hand, laws abolishing the right to redeem or shortening the period previously allowed can not operate to impair the rights of a mortgagor under an existing mortgage.

Brine *v.* Insurance Co., 96 U. S. 637.
Bronson *v.* Kinzie, 1 How. 318.
Clark *v.* Reyburn, 8 Wall. 322.
Howard *v.* Bugbee, 24 How. 464.
Barnitz *v.* Beverly, 163 U. S. 129.
McCracken *v.* Hayward, 2 How. 608.
Gantly *v.* Ewing, 3 How. 716.
Conley *v.* Barton, 260 U. S. 677.

An independent purchaser, having no connection whatever with the mortgage excepting as he becomes such purchaser at the foreclosure sale, can not raise the question in his own behalf in relation to the validity of the legislation as to redemption and rate of interest which existed at the time he made his purchase.

Hooker *v.* Burr, 194 U. S. 426.
Essex *v.* Skinkle, 140 U. S. 334.
East Tennessee, etc., R. Co. *v.* Frazier, 139 U. S. 288.
See also—
Red River Valley Bank *v.* Craig, 181 U. S. 548, as to legislation affecting remedy merely.
Bradley *v.* Lightcap, 195 U. S. 1, as to mortgagee's right to deed.

Where the judgment of a State court that a mortgage foreclosure is valid without reference to a law regulating foreclosure passed after the execution of the mortgage, such law does not impair the obligation of the contract if the decision of the State court is not erroneous.

Kennebec Railroad *v.* Portland Railroad, 14 Wall. 23.

The obligations of a contract of the State of California with a purchaser of public land, which gave to the State the right to foreclose for default in payment of the purchase price and to the purchaser the privilege of redemption within 20 days from the entry of the foreclosure decree upon payment of the amount due the State and the costs of suit, were not impaired by the enactment of subsequent legislation under which, in case

principal and interest were in arrears for five years and the State had issued to a subsequent purchaser another certificate for the same land, the first purchaser's right to the land and to complete the contract of purchase was cut off unless he should pay all unpaid interest within six months from the passage of the act.

Aikins *v.* Kingsbury, 247 U. S. 484.

Recording acts.—It is within the undoubted power of State legislatures to pass recording acts by which the elder grantee of land shall be postponed to a younger if the prior deed is not recorded within the limited time. And the power is the same whether the deed is dated before or after the passage of the recording act. Though the effect of such a law is to render the prior deed fraudulent and void against a subsequent purchaser it is not a law impairing the obligation of the contract.

Jackson *v.* Lamphire, 3 Pet. 289.
Phalen *v.* Virginia, 8 How. 167.
Louisiana *v.* New Orleans, 102 U. S. 204.
Vance *v.* Vance, 108 U. S. 518.

Power to change remedy—*In general.*—A change in the remedy to enforce a contract may be made without impairing its obligation.

Wilson *v.* Standefer, 184 U. S. 415.
Pittsburg Steel Co. *v.* Baltimore Equitable Soc., 226 U. S. 455.
Bernheimer *v.* Converse, 206 U. S. 516.

In modes of proceeding and forms to enforce the contract the legislature has the control, and may enlarge, limit, or alter them, provided it does not deny a remedy or so embarrass it with conditions or restrictions as seriously to impair the value of the right.

Penniman's case, 103 U. S. 720.

It is competent for the States to change the form of the remedy or to modify it otherwise as they may see fit provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which under the form of modifying the remedy impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced the act is within the prohibition of the Constitution and to that extent void.

Von Hoffman *v.* Quincy, 4 Wall. 553.

In placing the obligation of contracts under the protection of the Constitution its framers looked to the essentials of the contract more than to the forms and modes of proceeding by which it was to be carried into execution, annulling all State

legislation which impaired the obligation it was left to the States to prescribe and shape the remedy to enforce it.

McCracken *v.* Hayward, 2 How. 608.

Particular remedy abrogated.—Modes of procedure in the courts of a State are so far within its control that a particular remedy existing at the time of the making of a contract may be abrogated altogether without impairing the obligation of the contract if another and equally adequate remedy for the enforcement of that obligation remains or is substituted for the one taken away.

New Orleans, etc., R. Co. *v.* Louisiana, 157 U. S. 224.
Tennessee *v.* Sneed, 96 U. S. 74.
Railroad Co. *v.* Tennessee, 101 U. S. 339.
Oshkosh Waterworks Co. *v.* Oshkosh, 187 U. S. 439.

State statute enabling corporations in other States and countries to lend money and to enforce their securities, etc., when making its provisions applicable to existing contracts and securities does not impair the obligation of contracts when "the statutes and public policy of that State, prior to the enactment of the statute, forbade a foreign corporation from taking a mortgage upon real property in that State to secure the loan of money."

Gross *v.* U. S. Mortgage Co., 108 U. S. 488.

Supplying a remedy where none existed.—Where parties have, in good faith, and for a valuable consideration, entered into an engagement that is not contrary to good morals, and is invalid only because of some legal impediment, the legislature may, by subsequent enactment, provide a legal remedy, and thus give validity to the obligation that the parties intended to create.

National Surety Co. *v.* Architectural Co., 226 U. S. 276.

Changes interfering with or denying enforcement.—The court said in Barnitz *v.* Beverly (163 U. S. 122) that the laws prescribing "the mode of enforcing a contract, which are in existence when it is made, are so far a part of the contract that no changes in these laws which seriously interfere with that enforcement are valid, because they impair its obligation within the meaning of the Constitution."

See also—
McGahey *v.* Virginia, 135 U. S. 662.
Walker *v.* Whitehead, 16 Wall. 314.
Butz *v.* Muscatine, 8 Wall. 583.

Rights of action and defenses.—A statute creating a right of action on a contract previously executed or on a debt previously incurred does not impair any contract obligation; it rather declares a means by which the obligation may be enforced.

Ewell *v.* Daggs, 108 U. S. 151.
See also—
League *v.* De Young, 11 How. 202.

Lampeyreac *v.* U. S., 7 Pet. 222.
Curtis *v.* Whitney, 13 Wall. 71.
Lobrano *v.* Nelligan, 9 Wall. 295.
Williamson *v.* Suydam, 6 Wall. 738.

Laws regulating procedure.—Laws regulating procedure and practice in the courts are valid if they operate only on the remedy, and the forms and system of courts and proceedings may be changed at the will of the legislature.

Ogden *v.* Saunders, 12 Wheat. 349.
Livingston *v.* Moore, 7 Pet. 469.
Terry *v.* Anderson, 95 U. S. 633.
Hill *v.* Insurance Co., 134 U. S. 527.
Railroad Co. *v.* Hecht, 95 U. S. 170.

Laws Affecting Contracts

What constitutes a "law" within the prohibition.—This prohibition applies only to laws which are retrospective in their operation; contracts are not impaired by laws passed prior to their execution, and States are free to legislate as to future contracts.

Railroad *v.* McClure, 10 Wall. 515.
Lehigh Water Co. *v.* Easton, 121 U. S. 391.
Pinney *v.* Nelson, 183 U. S. 147.
Central Land Co. *v.* Laidley, 159 U. S. 112.
Turner *v.* Wilkes County, 173 U. S. 461.

Statutes enacted by the State legislature are not alone within this prohibition; by-laws or ordinances of a municipal corporation having the force of law within the municipality are contemplated; and a State constitutional provision may be as objectionable as a legislative act, and rights acquired under one constitution can not be impaired by a later one or by an amendment.

St. Paul Gaslight Co. *v.* St. Paul, 181 U. S. 148.
Dodge *v.* Woolsey, 18 How. 360.
Pacific R. Co. *v.* Maguire, 20 Wall. 42.
See also—
Delmas *v.* Insurance Co., 14 Wall. 667.
Concord *v.* Portsmouth Sav. Bank, 92 U. S. 630.
Moultrie County *v.* Savings Bank, 92 U. S. 635.
New Orleans Gaslight Co. *v.* Louisiana Light Co., 115 U. S. 672.
Houston, etc., R. Co. *v.* Texas, 170 U. S. 261.
Keith *v.* Clark, 97 U. S. 454.
Poindexter *v.* Greenhow, 114 U. S. 291.
Groves *v.* Slaughter, 15 Pet. 500.
Murray *v.* Charleston, 96 U. S. 440.
Hamilton Gaslight Co. *v.* Hamilton City, 146 U. S. 266.
New Orleans Waterworks *v.* Louisiana Sugar Co., 125 U. S. 31.

Sources of laws affecting contracts—*Constitutions and statutes.*—This constitutional provision is addressed to States, and it is applicable to States whether exercising through their legislatures ordinary law-making powers, or by conventions or other

delegated authority, or in their aggregate capacity, adopting or amending their organic laws.

State *v.* New Orleans, 29 La. Ann. 863.
See also—
Bier *v.* McGehee, 148 U. S. 140.
Stewart *v.* Jefferson Police Jury, 116 U. S. 135.
New Orleans Water-Works Co. *v.* Rivers, 115 U. S. 680.
Gunn *v.* Barry, 15 Wall. 623.
White *v.* Hart, 13 Wall. 652.

Statute providing that certain leases shall be valid and enforceable contracts held not an attempted exercise of judicial power.

Roberts *v.* Atlantic Oil Co., 295 Fed. 16.

Municipal ordinances.—A by-law or ordinance of a municipal corporation may be such an exercise of legislative power delegated by the legislature to the corporation as a political subdivision of the State, having all the force of law within the limits of the municipality, that it may properly be considered as a law within the meaning of this clause.

Atlantic Coast Line *v.* Goldsboro, 232 U. S. 548.
Northern Pac. R. Co. *v.* Duluth, 208 U. S. 583.
Mercantile Trust, etc., Co. *v.* Columbus, 203 U. S. 311.
Walla Walla *v.* Walla Walla Water Co., 172 U. S. 1.
Meriwether *v.* Garrett, 102 U. S. 472.
U. S. *v.* New Orleans, 98 U. S. 381.
Murray *v.* Charleston, 96 U. S. 432.
Vicksburg *v.* Vicksburg Waterworks Co., 202 U. S. 453.
Pacific Elec. R. Co. *v.* Los Angeles, 194 U. S. 112.
Vicksburg Waterworks Co. *v.* Vicksburg, 185 U. S. 65.

A municipal ordinance, the effect of which is merely to deny liability on a contract or to declare the repudiation thereof, and which prescribes no antagonistic rights or duties, is not legislation impairing its obligation, though the contract so repudiated is valid and binding.

St. Paul Gaslight Co. *v.* St. Paul, 181 U. S. 142.
McCormick *v.* Oklahoma City, 236 U. S. 657.
Shawnee Sewerage, etc., Co. *v.* Stearns, 220 U. S. 462.

The mere repudiation of a contract by a city, and the refusal to pay, present a naked case of breach of contract, and the fact that the city is a municipal corporation does not give to its refusal the character of a law impairing the obligation of contracts.

In Dawson v. Columbia Ave., etc., Co. (197 U. S. 181), citing St. Paul Gas Light Co. *v.* St. Paul (181 U. S. 142), the court said:

> Undoubtedly the decisions on the two sides of the lines are very near to each other. But the case at bar is governed by the one which we have cited and not by Walla Walla *v.* Walla Walla Water Co. (172 U. S. 1), which is cited and distinguished in St. Paul Gas Light Co. *v.* St. Paul.

Judicial decisions and administrative acts.—Judicial decisions construing a contract or statute are not "laws" within the meaning of this prohibition; to come within the prohibition a

contract must be impaired by legislative act and not alone by judicial decision. So where a State may repeal a law without impairing the obligation of existing contracts, an erroneous decision that the law has been repealed does not impair the obligation of such contracts; but, on the other hand, where a State has power to exempt property from taxation a decision to the effect that a law so doing is unconstitutional impairs a contract created by that law. It is only where a decision gives effect to a law alleged to impair contract obligations that the Supreme Court acquires jurisdiction to review a State court judgment under this clause.

University *v.* People, 99 U. S. 320.
Central Land Co. *v.* Laidley, 159 U. S. 109.
Baltzer *v.* North Carolina, 161 U. S. 240.
Mobile R. Co. *v.* Tennessee, 153 U. S. 495.
New Orleans Waterworks Co. *v.* Louisiana, 185 U. S. 351.
Tidal Oil Co. *v.* Flanagan, 263 U. S. 444, and cases therein cited.
Fleming *v.* Fleming, 264 U. S. 29.

While, in general, legislative action is necessary in order to violate the provision against impairment, yet the law as established by judicial construction at the time a contract was made can not be changed by judicial construction so as to impair that contract. If a contract was valid at the time it was made, no subsequent legislation, decision, construction, or alteration of the law can render it invalid.

Ohio Life Ins. Co. *v.* Debolt, 16 How. 432.
Havemeyer *v.* Iowa County, 3 Wall. 303.
Butz *v.* Muscatine, 8 Wall. 584.
Olcott *v.* Supervisors, 16 Wall. 678.
Pine Grove *v.* Talcott, 19 Wall. 666.
City *v.* Lamson, 9 Wall. 477.
Taylor *v.* Ypsilanti, 105 U. S. 60.
Shapleigh *v.* San Angelo, 167 U. S. 657.
Commissioners *v.* Thayer, 94 U. S. 642.
U. S. *v.* New Orleans, 98 U. S. 397.
Pana *v.* Bowler, 107 U. S. 541.
Wood *v.* Brady, 150 U. S. 22.
Forbes Pioneer Boat Line *v.* Board of Comrs., 258 U. S. 338.

The contract clause can not be invoked against a change of decision by a State court.

St. Paul, etc., R. Co. *v.* Todd County, 142 U. S. 282.
Hanford *v.* Davies, 163 U. S. 273.
National Mut. B. & L. Assn. *v.* Brahan, 193 U. S. 635.
Thomson *v.* Lee County, 3 Wall. 327.
Chicago *v.* Sheldon, 9 Wall. 50.
Douglass *v.* Pike County, 101 U. S. 677.
Louisiana *v.* Pilsbury, 105 U. S. 278.
Los Angeles *v.* Los Angeles City Water Co., 177 U. S. 558.

The impairment of contracts may not be accomplished by judicial decisions or by legislative enactments.

Pine Grove *v.* Talcott, 19 Wall. 666.
Union Bank *v.* Geary, 5 Pet. 99.
Bethell *v.* Demaret, 10 Wall. 537.

Pleasant *v.* Aetna Life Ins. Co., 138 U. S. 67.
Wood *v.* Brady, 150 U. S. 18.
Houston, etc., R. Co. *v.* Texas, 177 U. S. 66.
Wilkes County *v.* Coler, 180 U. S. 506.
Zane *v.* Hamilton County, 189 U. S. 370.
Swift *v.* McPherson, 232 U. S. 51.

In order to come within this clause not only must the obligation of a contract have been impaired but it must have been impaired by the law of the State. The prohibition is aimed at the legislative power of the State, and not at the decisions of its courts or the acts of administrative or executive boards or officers, or the doings of corporations or individuals.

Kryger *v.* Wilson, 242 U. S. 171.
Fisher *v.* New Orleans, 218 U. S. 438.
New Orleans Waterworks Co. *v.* Louisiana Sugar Ref. Co., 125 U. S. 30.
Weber *v.* Rogan, 188 U. S. 10.
Central Land Co. *v.* Laidley, 159 U. S. 109.
Brown *v.* Smart, 145 U. S. 454.
McCoy *v.* Union Ele. R. Co., 247 U. S. 354.

Errors in judicial decisions.—This clause, as its terms disclose, is not directed against all impairment of contract obligations, but only against such as results from a subsequent exertion of the legislative power of the State. As was said by the court in Cross Lake Club *v.* Louisiana (224 U. S. 638):

> It does not reach mere errors committed by a State court when passing upon the validity or effect of a contract under the laws in existence when it was made. And so while such errors may operate to impair the obligation of the contract they do not give rise to a Federal question.

See also—

Cleveland, etc., R. Co. *v.* Cleveland, 235 U. S. 50.
Moore-Mansfield Co. *v.* Electrical Co., 234 U. S. 619.
Willoughby *v.* Chicago, 235 U. S. 45.
Railway Company *v.* Rock, 4 Wall. 177.
Railway Company *v.* McClure, 10 Wall. 511.
Knox *v.* Exchange Bank, 12 Wall. 379.
Delmas *v.* Insurance Company, 14 Wall. 661.
University *v.* People, 99 U. S. 309.
Chicago Life Ins. Co. *v.* Needles, 113 U. S. 574.
Lehigh Water Co. *v.* Easton, 121 U. S. 392.
New York Guaranty, etc., Co. *v.* Board of Liquidation, 105 U. S. 622.

Retrospective laws—*In general.*—The inhibition of this clause is not aimed at all laws of a retrospective nature; such laws do not necessarily violate the obligation of contracts. Accordingly, while retrospective statutes are, in general, to be condemned, the statutes should be construed, if possible, to operate prospectively, yet if they do not violate the obligation of contracts or partake of the character of *ex post facto* laws they violate no constitutional provision.

Locke *v.* New Orleans, 4 Wall. 173.
Calder *v.* Bull, 3 Dall. 386.
Satterlee *v.* Matthewson, 2 Pet. 413.

See also—
Curtis *v.* Whitney, 13 Wall. 70.
Blount *v.* Windley, 95 U. S. 180.
Freeland *v.* Williams, 131 U. S. 420.
Williams *v.* Paine, 169 U. S. 79.
Wilkinson *v.* Leland, 2 Pet. 661.
Drehman *v.* Stifle, 8 Wall. 603.

Remedial or curative legislation does not impair contract obligations, but rather tends to confirm them. Of this nature are laws curing defects in titles to land, validating defective acknowledgments, validating a married woman's power or attorney and sales made thereunder, validating void or voidable contracts, curing defects or invalidity of bond issues resulting from irregularities or want of power, validating judgments rendered in excess of a court's jurisdiction.

Watson *v.* Mercer, 8 Pet. 110.
Carpenter *v.* Dexter, 8 Wall. 525.
Randall *v.* Kreiger, 23 Wall. 147.
Ewell *v.* Daggs, 108 U. S. 151.
Thomson *v.* Lee County, 3 Wall. 331.
See also—
Mechanics', etc., Bank *v.* Union Bank, 22 Wall. 298.
Ritchie *v.* Franklin County, 22 Wall. 75.
McFaddin *v.* Evans-Snider-Buel Co., 185 U. S. 513.
Kearney *v.* Taylor, 15 How. 517.
Webb *v.* Den, 17 How. 578.
Gross *v.* U. S. Mortgage Co., 108 U. S. 488.
Beloit *v.* Morgan, 7 Wall. 624.
Anderson *v.* Santa Anna, 116 U. S. 361.
Bolles *v.* Brimfield, 120 U. S. 763.
St. Joseph *v.* Rogers, 16 Wall. 663.

Laws presumed prospective.—In the matter of impairing obligation of contracts, the court said in Shreveport *v.* Cole (129 U. S. 43) that—

constitutions, as well as statutes, are construed to operate prospectively only, unless on the face of the instrument or enactment the contrary intention is manifest beyond reasonable question.

See also—
Southwestern Coal Co. *v.* McBride, 185 U. S. 499.
Diamond Glue Co. *v.* U. S. Glue Co., 187 U. S. 611.

What retrospective laws may be passed.—Retrospective laws which do not impair the obligation of contracts or partake of the character of *ex post facto* laws are not condemned or forbidden by any part of the Constitution.

Satterlee *v.* Matthewson, 2 Pet. 410.

A State law may be retrospective in its character and may divest vested rights and yet not violate the Constitution unless it also impairs the obligation of a contract.

Charles River Bridge *v.* Warren Bridge, 11 Pet. 539.

When the State court has once interpreted the contract, that interpretation becomes a part of the contract, and any subse-

quent change to the injury of a contracting party impairs the obligation of the contract.

Sauer *v.* New York, 206 U. S. 536.
Muhlker *v.* New York, etc., R. Co., 197 U. S. 570.
Gelpcke *v.* Dubuque, 1 Wall. 206.
Perry Co. *v.* Norfolk, 220 U. S. 472.

As to an order by State railroad commission.—Such an order is a "law" within the meaning of this clause.

Louisville, etc., R. Co. *v.* Garrett, 231 U. S. 298.
Grand Trunk R. Co. *v.* Indiana, 221 U. S. 400.

Legislation of foreign country.—Legislation of a foreign state which would, if passed by one of the United States, have been unconstitutional as violating the obligation of a contract will not be recognized as valid, comity not requiring the recognition of a foreign law which is repugnant to the fundamental principles of the *lex fori.*

Gebhard *v.* Canada Southern R. Co., 1 Fed. 387; reversed in Canada Southern R. Co. *v.* Gebhard, 109 U. S. 527, Harlan, J., dissenting.

Police Powers[1]

Regulations as affecting obligation—*In general.*—All contracts are inherently subject to the paramount power of the sovereign, the exercise of which is never understood to involve their violation within the meaning of the obligation clause of the Constitution; the power acts upon property, not upon contract. Neither the legislature nor the people themselves can bargain away the power to regulate the public health and morals, or legislative discretion concerning such regulation, and the power is inalienable even by express grant. One legislature can not by contract restrain the power of a subsequent legislature to legislate for the public welfare, and to that end to suppress any and all practices tending to corrupt the public morals or impair the public health. The legislative power extends only to irrevocable grants of property and franchises which do not impair this sovereign right of police regulation, but while this power can not be abdicated, it may in some instances be delegated, subject always to the power of revocation.

Osborn *v.* Nicholson, 13 Wall. 660.
Beer Co. *v.* Massachusetts, 97 U. S. 25.
Stone *v.* Mississippi, 101 U. S. 819.
Boyd *v.* Alabama, 94 U. S. 650.
Illinois Cent. R. Co. *v.* Illinois, 146 U. S. 453.
See also—
New Orleans Gas Co. *v.* Louisiana Light Co., 115 U. S. 672.
New Orleans Waterworks *v.* Rivers, 115 U. S. 681.
Butchers' Union Co. *v.* Crescent City Co., 111 U. S. 751.
New York, etc., R. Co. *v.* Bristol, 151 U. S. 567.
Holden *v.* Hardy, 169 U. S. 392.
Fertilizing Co. *v.* Hyde Park, 97 U. S. 670.

[1] See same subject, pp. 146, 634, 672, and 726.

The police power comprehends all those general laws of internal regulation necessary to secure peace, good order, health, and the comfort of society, private interests being subservient to the general interests of the community.

Slaughterhouse Cases, 16 Wall. 62.
Munn *v.* Illinois, 94 U. S. 125.
Patterson *v.* Kentucky, 97 U. S. 504.
Cotting *v.* Kansas City Stockyards Co., 183 U. S. 84.

The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community, and for the commonwealth individuals must suffer the destruction of property, and even of life, rights of necessity being part of the law.

Crowley *v.* Christensen, 137 U. S. 89.
Bowditch *v.* Boston, 101 U. S. 18.
See also—
U. S. *v.* Dewitt, 9 Wall. 41.
Phalen *v.* Virginia, 8 How. 163.
Douglas *v.* Kentucky, 168 U. S. 498.

It is the province of the legislature to determine the exigency calling for the exercise of the police power, and of the courts to decide as to the proper subjects of its exercise. As to whether a purported police regulation is wise or reasonable the courts will not determine; the legislature possesses a wide discretion in this respect. The mere fact of pecuniary injury is not sufficient to warrant the holding of a police regulation as invalid.

Lawton *v.* Steele, 152 U. S. 136.
Railroad Co. *v.* Richmond, 96 U. S. 528.
Plessy *v.* Ferguson, 163 U. S. 550.
L'Hote *v.* New Orleans, 177 U. S. 598.
Allgeyer *v.* Louisiana, 165 U. S. 590.
Patterson *v.* Kentucky, 97 U. S. 504.

This clause does not restrict the power of the State to protect the public health, morals, or safety. Rights and privileges arising from contracts with a State are subject to regulations for the protection of the public health, etc., in the same sense and to the same extent as are all contracts and all property.

New Orleans Gas Light Co. *v.* Louisiana Light Co., 115 U. S. 672.
Manigault *v.* Springs, 199 U. S. 478.
New Orleans Water Works Co. *v.* Rivers, 115 U. S. 681.
Louisville Gas Co. *v.* Citizens, etc., Co., 115 U. S. 683.

Control of streets.—The general principle is well established that the legislative power of a city may control and improve the streets, and that such power, when duly exercised by ordinances, will override any license previously given by which the control of a certain street has been surrendered to any individual or corporation.

Wabash R. Co. *v.* Defiance, 167 U. S. 97.
New York *v.* Squire, 145 U. S. 175.
Missouri *v.* Murphy, 170 U. S. 78.

Regulation of business—(*a*) *In general.*—The reasonable regulation of a business or trade is within the police power of the States, and such regulation may extend to both the exercise and mode of exercise of the business or trade. So the regulation of the business of mining and the prescribing of certain precautions to secure the safety, health, and comfort of laborers is a valid exercise of the power, e. g., an act regulating the hours of labor in mines and smelters.

Soon Hing *v.* Crowley, 113 U. S. 708.
Gundling *v.* Chicago, 177 U. S. 188.
St. Louis, etc., Coal Co. *v.* Illinois, 185 U. S. 207.
Holden *v.* Hardy, 169 U. S. 395.

(*b*) *Hours of labor.*—State labor law providing that no employees shall be required or permitted to work in bakeries more than 60 hours in a week, or 10 hours a day, is not a legitimate exercise of the police power of the State, but an unreasonable, unnecessary, and arbitrary interference with the right and liberty of the individual to contract, in relation to labor, and as such it is in conflict with, and void under, the Federal Constitution.

Lochner *v.* New York, 198 U. S. 45, Justices Harlan, White, Day, and Holmes dissenting.

(*c*) *Corporations.*—The imposition of duties and obligations in a corporate charter does not prevent the legislature from imposing further duties for the safety of persons and property, and statutory authority given to a corporation to engage in a particular private business detrimental to public health or morals does not constitute a contract preventing its withdrawal. Provisions for penalties and forfeitures in a charter are not mere matters of contract. When applied to corporations, however, the police power is subject to constitutional limitations, and to be valid they must be in fact regulations calculated to preserve the public health, morals, or safety.

Minneapolis, etc., R. Co. *v.* Emmons, 149 U. S. 368.
New Orleans Gaslight Co. *v.* Louisiana Light Co., 115 U. S. 669.
Maryland *v.* Baltimore, etc., R. Co., 3 How. 552.
Lake View *v.* Rose Hill Cemetery, 70 Ill. 191.
Gulf, etc., R. Co. *v.* Ellis, 165 U. S. 158.

The charter of an insurance company does not exempt it from the obligation to comply with a subsequently established police regulation requiring it to make a statement of its condition and business.

Eagle Ins. Co. *v.* Ohio, 153 U. S. 453.

(*d*) *Gas works.*—Where a city ordinance prescribed certain limits for the erection of gas works, and subsequent thereto contracts were made to furnish materials and labor for gas works which were about to be erected, lands were purchased for a site within the territory and other money expended, it further appearing that prior to the adoption of a second ordinance a permit of the board of fire commissioners to erect the works was ob-

tained, it was held that a second ordinance changing the boundary so as to put the contemplated works outside of the territory where they could be erected was void.

Robbins *v.* Los Angeles, 195 U. S. 223.
Minneapolis *v.* Rand, 285 Fed. 818.

(*e*) *Slaughterhouses.*—A State legislature can not, by contract with an individual or corporation, restrain, diminish, or surrender its powers to enact laws for the preservation of the public health or the public morals. A State constitution and municipal ordinances passed thereunder, opening to general competition the right to build slaughterhouses, establish stock landings, and engage in the business of butchering in that city, under regulations established by these ordinances, are not void as impairing the obligation of a contract granting exclusive privileges for stock landings and slaughterhouses at that city.

Butchers' Union Co. v. Crescent City Co., 111 U. S. 746.

(*f*) *Railroad companies.*[1]—The charter of a railroad is not such a contract binding the State to allow the company at all times and in all ways to manage its own affairs, as is impaired by legislation establishing a railroad commission and empowering it to fix rates and make regulations for the operation of the road.

Railroad Commission Cases, 116 U. S. 331.

(*g*) *Liability of railroad for negligence.*—A statute under which a railroad company was incorporated, which contained a provision exempting the company from liability for the death of any person in its service, even if caused by its negligence, does not confer such a contract right as to exempt it from the operation of a later statute subjecting it to liability for negligence.

Texas, etc., R. Co. *v.* Miller, 221 U. S. 408.

As to the State increasing the liability of a railroad company, see—

Pennsylvania R. Co. *v.* Miller, 132 U. S. 75.

(*h*) *Abolition of grade crossings.*—A State statute which is directed to the elimination of railroad grade crossings and which authorizes municipal corporations to require alterations in such crossings, allowing the imposition of the entire expense of changes of grade, both costs and damages, irrespective of benefits, on the railway companies, does not impair the obligation of the charter contracts of the companies.

New York, etc., R. Co. *v.* Bristol, 151 U. S. 566.
Wabash R. Co. *v.* Defiance, 167 U. S. 88.

(*i*) *Liability for communicated fires.*—State statute by which a railroad is made responsible in damages for property injured

[1] See same subject under commerce clause, p. 83.

or destroyed by fire communicated by its locomotives does not impair the obligation of the charter contracts.

St. Louis, etc., R. Co. *v.* Mathews, 165 U. S. 5.
See also—
Chicago, etc., R. Co. *v.* Tranbarger, 238 U. S. 67, as to requiring railroad to cut drain through railroad embankment.

(*j*) *Advertising in stage coaches.*—Contract obligations are not unconstitutionally impaired by a municipal ordinance under which a domestic corporation operating stage routes in the city streets is forbidden to display exterior advertisements on its stages, where at the time the advertising contracts were entered into there existed an ordinance almost identical in terms, and the company's charter did not confer any right to use its stages for advertising purposes.

Fifth Ave. Coach Co. *v.* New York, 221 U. S. 467.

(*k*) *Use of city streets.*—An ordinance prohibiting the hauling of freight cars on railroads in a city street is not a valid exercise of regulation reserved in ordinance designating streets on which railroad tracks could be located, as impairing the obligation of the contract under which tracks were located and terminals built.

Southern Pac. Co. *v.* Portland, 227 U. S. 559.
Atlantic, etc., R. Co. *v.* Goldsboro, 232 U. S. 548.

No contract rights to occupy city sidewalks with a spur track can be implied from resolution of aldermen, after construction of road, granting permission to occupy the sidewalk without any contract as to time.

Seaboard Air Line *v.* Raleigh, 242 U. S. 15.
See also—
Northern Ohio Traction, etc., Co. *v.* Ohio, 245 U. S. 574.

(*l*) *Free transportation.*—Requirements of Laws of New Jersey, 1912, page 235, that street railways grant transportation to city detectives held not an arbitrary exercise of police power, where charter of street railway company in question was subject to alteration by legislature.

Sutton *v.* New Jersey, 244 U. S. 258.

(*m*) *Location of station.*—The consent of railroad commissioners that a railroad company might discontinue and abandon a depot at a certain place, upon providing suitable accommodations at another point, is not such a contract as is impaired by a statute requiring the company to maintain a depot at the abandoned place.

Railroad Co. *v.* Hamersley, 104 U. S. 1.
Houston, etc., R. Co. *v.* Texas, 170 U. S. 252.
Galveston, etc., R. Co. *v.* Texas, 170 U. S. 239.

See also—

Fair Haven, etc., R. Co. *v.* New Haven, 203 U. S. 379, as to the State requiring a railroad company to pave and repair part of street occupied by track.

Grand Trunk, etc., R. Co. *v.* Indiana, 221 U. S. 400, as to contract between railroads to guard crossings and State requirement to install interlocking plant.

Railroad corporations are always amenable to the State's police power, notwithstanding any charter provisions to the contrary.

Chicago, etc., R. Co. *v.* Nebraska, 170 U. S. 73.
Gladson *v.* Minnesota, 166 U. S. 427.

Intoxicating liquors.—The legislature may regulate or prohibit the sale of intoxicating liquors, and the regulation or prohibition may operate to revoke licenses already granted and not yet expired. The fact that the Federal Government may have granted a license to sell liquor does not authorize any violation of State laws nor preclude prohibition on the part of the State.

Pervear *v.* Commonwealth, 5 Wall. 479.
McGuire *v.* Commonwealth, 3 Wall. 395.

See also—

Gilman *v.* Philadelphia, 3 Wall. 730.
Bartemeyer *v.* Iowa, 18 Wall. 132.
Eilenbecker *v.* Plymouth Co., 134 U. S. 40.
Giozza *v.* Tiernan, 148 U. S. 662.
Crowley *v.* Christensen, 137 U. S. 91.

Lottery franchises.—May be repealed even after rights have been acquired thereunder.

Stone *v.* Mississippi, 101 U. S. 820.
Boyd *v.* Alabama, 94 U. S. 645.
Phalen *v.* Virginia, 8 How. 167.
Douglas *v.* Kentucky, 168 U. S. 495.
Andrews *v.* Andrews, 188 U. S. 14.
New Orleans *v.* Houston, 119 U. S. 265.

State can not divest itself of police power.—A State legislature can not, by any contract, divest itself of the power to provide for the protection of the lives, health, and property of its citizens and the preservation of good order and the public morals.

Beer Co. *v.* Massachusetts, 97 U. S. 33.
Atlantic Coast Line *v.* Goldsboro, 232 U. S. 548.
Grand Trunk, etc., R. Co. *v.* South Bend, 227 U. S. 544.
Wabash R. Co. *v.* Defiance, 167 U. S. 100.
Newton *v.* Commissioners, 100 U. S. 557.

The doctrine that a corporate charter is a contract which the Constitution protects against impairment by subsequent State legislation is ever limited in the area of its operation by the equally well-settled principle that a legislature can neither bargain away the police power nor in any wise withdraw from its successors the power to take appropriate measures to guard

the safety, health, and morals of all who may be within their jurisdiction.

Texas, etc., R. Co. *v.* Miller, 221 U. S. 408.
Northern Pac. R. Co. *v.* Duluth, 208 U. S. 583.

State Taxation.[1]

In general.—The provisions of this clause are a limitation upon the taxing power of a State as well as upon any other legislation; the manner of impairment is immaterial. A statute requiring the tax upon State bonds to be deducted from the coupons originally attached to them when tendered in payment of debts due the State is void as to coupons already separated from bonds held by a different person. The taxation of city bonds not liable to taxation impairs them, but there is no prohibition against the taxation by a State of bonds issued by itself for borrowed money. A statute authorizing the imposition of a tax according to a previous assessment is not unconstitutional.

Murray *v.* Charleston, 96 U. S. 443.
Hartman *v.* Greenhow, 102 U. S. 672.
Antoni *v.* Greenhow, 107 U. S. 780.
Locke *v.* New Orleans, 4 Wall. 173.
North Missouri R. Co. *v.* Maguire, 20 Wall. 46.
Weston *v.* Charleston, 2 Pet. 467.

It is within the power of the legislature also to validate erroneous assessments; to authorize a tax auditor to go back for a certain period and correct false returns; to provide for the taxation of lands which have improperly escaped taxation; to change the method of taxing corporations; to provide that taxes already delinquent shall bear interest from the date delinquency commenced. But legislative ratification can not cure undisclosed fraud nor can it validate a tax sale void for want of notice.

Mattingly *v.* D. C., 97 U. S. 691.
Sturges *v.* Carter, 114 U. S. 516.
Winona, etc., Land Co. *v.* Minnesota, 159 U. S. 529.
State Bank of Ohio *v.* Knoop, 16 How. 408.
League *v.* Texas, 184 U. S. 161.
Santa Ana Water Co. *v.* San Buena Ventura, 65 Fed. 328.
Forster *v.* Forster, 129 Mass. 566.
Williams *v.* Supervisors, 122 U. S. 164.
Walker *v.* Whitehead, 16 Wall. 316.
New Orleans *v.* Clark, 95 U. S. 654.
Blount v. Windley, 95 U. S. 180.
Hunter *v.* Pittsburgh, 207 U. S. 161.

A State can not pass a law taxing a corporation if it would thereby impair the obligation of any contract. So, where the charter of a corporation provides for the payment of a certain amount per annum upon each share of its stock in lieu of all other taxes, an additional tax upon shares in the hands of stockholders is void, and a law requiring corporations to retain, for

[1] See art. 1, sec. 8, cl. 1, as to power of Congress to lay and collect taxes, p. 74. See also same subject, pp. 180, 600, 636, 707, 728, and 745.

the payment of taxes, a certain portion of the interest due on bonds held by nonresidents impairs the obligation of the contract expressed in the bond.

Washington University *v.* Rouse, 8 Wall. 439.
Farrington *v.* Tennessee, 95 U. S. 688.
State Tax on Foreign-held Bonds, 15 Wall. 300, but in connection with this case, see Ammidown *v.* Freeland, 101 Mass. 303, 3 Am. Rep. 359.
Home of the Friendless *v.* Rouse, 8 Wall. 430.
Tennessee *v.* Whitworth, 117 U. S. 136.
Delaware R. R. Tax, 18 Wall. 232.
Curtis *v.* Whitney, 13 Wall. 68.

A lawful tax on a new subject, or an increased tax on an old one, does not interfere with a contract or impair its obligation within the meaning of this clause even though such taxation may affect particular contracts, as it may increase the debt of one person and lessen the security of another, or may impose additional burdens upon one class and release the burdens of another.

North Missouri R. Co. *v.* Maguire, 20 Wall. 61.
See also—
Home Ins. Co. *v.* Augusta, 93 U. S. 120.
Kehrer *v.* Stewart, 197 U. S. 60.
Memphis Gas Light Co. *v.* Shelby County, 109 U. S. 399.
Wiggins Ferry Co. *v.* East St. Louis, 107 U. S. 365.

This inhibition does not enable a contract between individuals to prevent a municipal corporation from exerting, as between it and one of the individuals, any power of taxation it legally possesses.

Henderson Brdg. Co. *v.* Henderson, 173 U. S. 592.

Limitation of municipal power of taxation by State.—Where a municipality contracts a debt when it has authority to levy a tax, a subsequent act limiting the power impairs the contract.

Von Hoffman *v.* Quincy, 4 Wall. 549.
Wolff *v.* New Orleans, 103 U. S. 358.
Ralls County Court *v.* U. S., 105 U. S. 733.
Louisiana *v.* St. Martin's Parish, 111 U. S. 716.
Mobile *v.* Watson, 116 U. S. 289.
Louisiana *v.* Pilsbury, 105 U. S. 278.

The limit of a city's power of taxation at the time a judgment for a tort was rendered against it was fixed at a certain rate which was subsequently reduced, making it impossible for plaintiffs to collect their judgment. Held, that the municipal liability for damages being purely statutory and for a tort, the provision reducing the rate of taxation did not impair a contract.

Louisiana *v.* New Orleans, 109 U. S. 285.

For other cases involving limitation and enlargement of taxing power, see—

Seibert *v.* Lewis, 122 U. S. 284.
Shreveport *v.* Cole, 129 U. S. 36.
Essex *v.* Skinkle, 140 U. S. 334.
U. S. *v.* Thoman, 156 U. S. 353.
Louisiana *v.* New Orleans, 215 U. S. 170.
Arkansas Sou. R. Co. *v.* Louisiana, etc., R. Co., 218 U. S. 431.
Cape Girardeau *v.* U. S., 118 U. S. 68.
Scotland County *v.* U. S., 140 U. S. 41.

Payment of taxes condition precedent to recovery on contract.—State statute providing that in a suit upon any debt or contract it should not be lawful for plaintiff to have judgment unless all legal taxes had been paid, and declaring it to be a condition precedent to the recovering that the debt had been regularly given in for taxes and the taxes paid, was held void as impairing the obligation of such contract.

Walker *v.* Whitehead, 16 Wall. 316.

State bonds.—A statute appropriating certain taxes for the purpose of paying bonds issued under a statute creates a contract with the bondholders which is impaired by an amendment of the State constitution transferring such taxes to defray the expenses of the State government.

Louisiana *v.* Jumel, 107 U. S. 711.
Royall *v.* Virginia, 116 U. S. 577.
Cuthbert *v.* Virginia, 135 U. S. 700.

See also—

McCullough *v.* Virginia, 172 U. S. 109, as to requiring evidence of genuineness of tax-receivable bonds.
In re Brown, 135 U. S. 707, as to limitation of time of presenting coupons.
Hartman *v.* Greenhow, 102 U. S. 674, as to tax on bonds deducted from separated coupons.
Vashon *v.* Greenhow, 135 U. S. 713, as to tendering tax-receivable coupons in payment of school taxes.
Same *v.* Same, 121 U. S. 102, as to payment of license taxes with tax-receivable coupons.
Sands *v.* Edmunds, 116 U. S. 585, as to license to engage in business of wholesale grocers.
Poindexter *v.* Greenhow, 114 U. S. 270;
White *v.* Greenhow, 114 U. S. 307;
Chaffin *v.* Taylor, 114 U. S. 309;
Allen *v.* Baltimore, etc., R. Co., 114 U. S. 311; and
Smith *v.* Greenhow, 109 U. S. 669, as to denying action of trespass for illegal levy.

Although the right to have tax-receivable coupons received in payment of taxes is founded on a contract with the State, and that right is protected by this section, the only mode of redress in case of any disturbance or dispossesion of property or for other legal rights based on such violation of the contract is to have a judicial determination in a suit between individuals on the invalidity of the law under color of which the wrong has

been committed. No direct action will lie for the denial of the rights secured by the contract.

Carter *v.* Greenhow, 114 U. S. 317.
Pleasants *v.* Greenhow, 114 U. S. 323.
Gilman *v.* Sheboygan, 2 Black 510.

The contract arising from State statutes authorizing a foreign railroad company to construct and operate its road within the State and its acting thereon is impaired by a subsequent statute requiring the company to collect a tax on its bonds held by residents of the State by deducting the tax from the interest on the bonds, they having previously issued under authority of the State by which the company was created and the interest being payable in that State only.

New York, etc., R. Co. *v.* Pennsylvania, 153 U. S. 628.

Contractual nature of charter provisions.—A provision in a general banking law that each bank should pay 6 per cent on profits in lieu of all taxes held to be a contract which was impaired by a law providing a new rate and manner of taxing banks.

State Bank of Ohio *v.* Knoop, 16 How. 378.
See also—
Gordon *v.* Appeal Tax Court, 3 How. 133.
Dodge *v.* Woolsey, 18 How. 331.
Jefferson Branch Bank *v.* Skelly, 1 Black 436.
Franklin Branch Bank *v.* Ohio, 1 Black 474.
Wright *v.* Sill, 2 Black 544.
Farrington *v.* Tennessee, 95 U. S. 679.
Mobile, etc., R. Co. *v.* Tennessee, 153 U. S. 486.
Powers *v.* Detroit, etc., R. Co., 201 U. S. 543.
Pacific R. Co. *v.* Maguire, 20 Wall. 36.
Stearns *v.* Minnesota, 179 U. S. 223.

A provision in an act amending the charter of a railroad, prescribing a mode for ascertaining the tax due the State, does not amount to a contract that the State will not pass any law to assess the property of the company for taxation for State purposes in a different manner.

Bailey *v.* Magwire, 22 Wall. 215.
See also—
Ohio Life Ins. etc., Co. *v.* Debolt, 16 How. 416.
Railway, etc., Co. *v.* Philadelphia, 101 U. S. 528.
New Orleans, etc., R. Co. *v.* New Orleans, 143 U. S. 192.
Bank of Commerce *v.* Tennessee, 163 U. S. 416.
Citizens' Savings Bank *v.* Owensboro, 173 U. S. 636.
Wisconsin, etc., R. Co. *v.* Powers, 191 U. S. 379.
Delaware Railroad Tax, 18 Wall. 206
Hubert *v.* New Orleans, 215 U. S. 170.
Von Hoffman *v.* Quincy, 4 Wall. 554.
Wolff *v.* New Orleans, 103 U. S. 365.
Murray *v.* Charleston, 96 U. S. 439.
Amy *v.* Shelby County, 114 U. S. 391.
New Orleans *v.* Morris, 105 U. S. 604.
U. S. *v.* Memphis, 97 U. S. 290.
Arkansas Sou. R. Co. *v.* Louisiana, etc., R. Co., 218 U. S 431.

Louisiana *v.* Pilsbury, 105 U. S. 278.
Galena *v.* Amy, 5 Wall. 705.
Butz *v.* Muscatine, 8 Wall. 584.
Douglass *v.* Pike County, 101 U. S. 687.
Mobile *v.* Watson, 116 U. S. 305.
Rast *v.* Van Deman, etc., Co., 240 U. S. 342.
Tanner *v.* Little, 240 U. S. 369.
Pitney *v.* Washington, 240 U. S. 387.
State *v.* Stoll, 17 Wall. 435.
Curtis *v.* Whitney, 13 Wall. 70.
Barrett *v.* Holmes, 102 U. S. 651.
Wheeler *v.* Jackson, 137 U. S. 245.
Schurz *v.* Cook, 148 U. S. 397.
Louisiana *v.* St. Martin's Parish, 111 U. S. 716.
Memphis *v.* U. S., 97 U. S. 293.
New Orleans *v.* Morris, 105 U. S. 600.

Succession or inheritance taxes.[1]—When a power of appointment was granted by deed, a transfer tax on the property upon the exercise of the power by will does not impair the obligation of any contract.

Chanler *v.* Kelsey, 205 U. S. 466.

A transfer or succession tax, not being a direct tax upon property but a charge upon a privilege exercised or enjoyed under the law of the State, does not, when imposed in cases where the property passing consists of securities exempt by statute, impair the obligation of a contract under this clause.

Orr *v.* Gilman, 183 U. S. 289.

A State may impose a tax on the share of the wife in the community property on the occasion of the cessation by the death of the husband of his dominion and control over the common property, and the consequent complete vesting in enjoyment of such share in the wife.

Moffitt *v.* Kelly, 218 U. S. 400.

The fact that two States, dealing each with its own law of succession, both of which a person has to invoke for his rights, have taxed the right which they, respectively, confer, gives no cause for complaint on constitutional grounds.

Blackstone *v.* Miller, 188 U. S. 207.

Charter power to do a safe deposit business is not impaired by inheritance tax law prohibiting the removal of the contents of safe deposit boxes after the death of the renter except on notice to the attorney general and State treasurer and the retention of sufficient assets to pay the tax.

National Safe Deposit Co. *v.* Stead, 232 U. S. 58.

A fund kept in trust in a foreign State, the creator reserving to himself an absolute control and taking the whole income,

[1] See same subject, pp. 368 and 729.

may be subjected to an inheritance tax by the domicile State without violating this clause.

Bullen *v.* Wisconsin, 240 U. S. 625.

Exemption from Taxation

In general.—Unless restrained by the State constitution the legislature may contract to exempt property from taxation so as to bind its successors. Such exemption is always a question of policy, never one of power, and a State in granting it relinguishes no part of its sovereign powers. But the State's right to tax can be relinquished only by express stipulation; the intention to grant the exemption must be clear and be indicated by unmistakable words. The power is necessary to the existence of a State and all acts limiting it must be strictly construed, and the question of legislative intent is always open.

New Jersey *v.* Wilson, 7 Cranch 164.
State Bank of Ohio *v.* Knoop, 16 How. 384.
Providence Bank *v.* Billings, 4 Pet. 561.
Gilman *v.* Sheboygan, 2 Black 513.
Jefferson Branch Bank *v.* Skelly, 1 Black 447.
New Orleans *v.* Houston, 119 U. S. 278.
See also—
Ohio Life Ins. Co. *v.* Debolt, 16 How. 428.
Philadelphia, etc., R. Co. *v.* Maryland, 10 How. 393.
Railroad Co. *v.* Gaines, 97 U. S. 708.
Dodge *v.* Woolsey, 18 How. 331.
Wilmington R. Co. *v.* Reid, 13 Wall. 267.
Von Hoffman *v.* Quincy, 4 Wall. 535.
Tomlinson *v.* Jessup, 15 Wall. 454.
Pacific R. Co. *v.* Maguire, 20 Wall. 43.
Bailey v. Magwire, 22 Wall. 226.
Mobile, etc., R. Co. *v.* Tennessee, 153 U. S. 500.
Charles River Brdg. *v.* Warren Brdg., 11 Pet. 546.
West Wisconsin R. Co. *v.* Supervisors, 93 U. S. 598.
Newton *v.* Commissioners, 100 U. S. 561.
Memphis Gas Co. *v.* Shelby County, 109 U. S. 398.
Southwestern R. Co. *v.* Wright, 116 U. S. 236.
Vicksburg R. Co. *v.* Dennis, 116 U. S. 668.
New Orleans R. Co. *v.* New Orleans, 143 U. S. 195.
Wilmington, etc., R. Co. *v.* Alsbrook, 146 U. S. 294.
Keokuk, etc., R. Co. *v.* Missouri, 152 U. S. 306.
New Jersey *v.* Yard, 95 U. S. 115.
Orr *v.* Gilman, 183 U. S. 278.
Mechanics' Bank *v.* Debolt, 18 How. 380.
Franklin Bank *v.* Ohio, 1 Black 474.
Wright *v.* Sill, 2 Black 544.
Louisville Water Co. *v.* Clark, 143 U. S. 1.

If the exemption is a mere gratuity, is spontaneous, and no service or duty or other condition is imposed, it may be withdrawn at any time. So a statute exempting the property of a manufacturing corporation from taxation for a period of years is a mere bounty and repealable. The consideration for the exemption must be something as to which there is no legal

duty, and the pledge of a grand lodge to give its revenues to charity is insufficient to render the immunity irrepealable where the duty already exists.

Rector, etc., *v.* Philadelphia County, 24 How. 300.
Salt Co. *v.* East Saginaw, 13 Wall. 377.
Tucker *v.* Ferguson, 22 Wall. 574.
Grand Lodge *v.* New Orleans, 166 U. S. 149.

The benefits accruing to the community may be a sufficient consideration for the exemption from taxation, and whenever there is a good consideration there is a contract which is protected from repeal or modification. If property be given to a society for certain purposes, under a statute exempting such gifts from taxation, the statute constitutes a contract with the donors, and the property must be exempt so long as it is used for the purposes for which it was granted.

Home of the Friendless *v.* Rouse, 8 Wall. 436.
Atwater *v.* Woodbridge, 6 Conn. 223.
See also—
Railway Co. *v.* Philadelphia, 101 U. S. 532.
Washington University *v.* Rouse, 8 Wall. 439.
Asylum *v.* New Orleans, 105 U. S. 368.
McGee *v.* Mathis, 4 Wall. 143.
Railroad Co. *v.* County of Hamblen, 102 U. S. 275.
Wilson *v.* Gaines, 103 U. S. 421.
Memphis R. Co. *v.* Commissioners, 112 U. S. 623.
Gulf, etc., R. Co. *v.* Hewes, 183 U. S. 66.
Armstrong *v.* Athens County, 16 Pet. 281.
Given *v.* Wright, 117 U. S. 648.
Planters' Ins. Co. *v.* Tennessee, 161 U. S. 197.
Stearns *v.* Minnesota, 179 U. S. 223.
Duluth, etc., R. Co. *v.* St. Louis County, 179 U. S. 302.
Northern Cent. R. Co. *v.* Maryland, 187 U. S. 258.
Savannah, etc., R. Co. *v.* Savannah, 198 U. S. 392.

In charters of corporations.—The State may exempt particular parcels of property from taxation, either for a specified period or perpetually, or may limit the amount or rate of taxation to which such property shall be subjected. And when such immunity is conferred or such limitation is prescribed by the charter of a corporation, it becomes a part of the contract, and is equally inviolate with its other stipulations.

Delaware Railroad Tax, 18 Wall. 225.
See also—
Gordon *v.* Appeal Tax Court, 3 How. 146.
Home of the Friendless *v.* Rouse, 8 Wall. 438.
Washington University *v.* Rouse, 8 Wall. 440.
Humphrey *v.* Pegues, 16 Wall. 249.
Pacific R. Co. *v.* Maguire, 20 Wall. 43.
Erie R. Co. *v.* Pennsylvania, 21 Wall. 498.
Morgan *v.* Louisiana, 93 U. S. 217.
Railroad Cos. *v.* Gaines, 97 U. S. 711.
Railroad Co. *v.* Commissioners, 103 U. S. 1.
Yazoo, etc., R. Co. *v.* Thomas, 132 U. S. 184.
Mobile, etc., R. Co. *v.* Tennessee, 153 U. S. 487.

Mercantile Bank *v.* Tennessee, 161 U. S. 171.
Phoenix, etc., Ins. Co. *v.* Tennessee, 161 U. S. 176.
Memphis City Bank *v.* Tennessee, 161 U. S. 190.
Home Ins. Co. *v.* Tennessee, 161 U. S. 198.
Powers *v.* Detroit, etc., R. Co., 201 U. S. 543.
Seton Hall College *v.* South Orange, 242 U. S. 100.
Stearns *v.* Minnesota, 179 U. S. 223.
Bailey *v.* Magwire, 22 Wall. 215.

Special tax for local improvement.—An exemption from taxation is to be taken as an exemption simply from the burden of ordinary taxes, taxes proper, and does not relieve from the obligation to pay special assessments.

Illinois Cent. R. Co. *v.* Decatur, 147 U. S. 199.
Ford *v.* Delta, etc., Land Co., 164 U. S. 670.

Exemption of land from taxation.—State statute authorizing the issue of transferable land scrip, and its receipt from locators of land in payment, and a provision offering inducements to purchasers and contractors by exempting from taxation for 10 years or until reclaimed all the swamp and overflowed lands, constituted a contract between the State and the holders of the land scrip issued under a statute; and a repeal of the exemption, so far as it concerned lands paid for either before or after the repeal by scrip issued and paid out before repeal, impaired the contract of the State with the holders of the scrip.

McGee *v.* Mathis, 4 Wall. 156.
New Jersey *v.* Wilson, 7 Cranch 164.

Exemption of right of way includes superstructures.—An exemption from taxation of the right of way across the public domain granted by an act of Congress includes an exemption from taxation of the superstructures built thereon.

New Mexico *v.* U. S. Trust Co., 172 U. S. 171; judgment modified, 174 U. S. 545.
University *v.* People, 99 U. S. 319.
Wilmington, etc., R. Co. *v.* Reid, 13 Wall. 268.
Raleigh, etc., R. Co. *v.* Reid, 13 Wall. 269.
See also—
Chicago, etc., R. Co. *v.* Guffey, 120 U. S. 574, as to branch railroads.
Ford *v.* Delta, etc., Land Co., 164 U. S. 667, as to property not used for corporate purposes.

License fees imposed by a municipal ordinance on granting a franchise to a street railroad to be taken in full satisfaction for the use of the streets or avenues, do not relieve the property of the company from liability to ordinary taxation, and a statute imposing a special franchise tax does not impair the obligation of a contract in such a case.

Brooklyn City R. Co. *v.* State Board, 199 U. S. 48.
Railway Co. *v.* Philadelphia, 101 U. S. 539.
St. Louis *v.* United R. Co., 210 U. S. 266.

Exemption of capital stock.—In Bank *v.* Tennessee (104 U. S. 495) the court said:

The capital stock of a corporation may in a general sense be said to be all the property in which the capital is invested; so that an exemption of

the capital stock, without other words of limitation, may operate to exempt all the property of the corporation. *Railroad Companies* v. *Gaines*, 97 U. S. 697. But where the purposes for which a corporation may hold property are specified in connection with the exemption the limitation of taxation designated must be held to apply only to property acquired for such purposes.

See also—

Wright *v.* Georgia R. Co., 216 U. S. 420.
Citizens' Bank *v.* Parker, 192 U. S. 85.
New Orleans *v.* Citizens Bank, 167 U. S. 406.
New Orleans *v.* Houston, 119 U. S. 279.
Tennessee *v.* Whitworth, 117 U. S. 130.
Vicksburg, etc., R. Co. *v.* Dennis, 116 U. S. 669.
Railway Co. *v.* Loftin, 98 U. S. 559.

Exemption of shares of stock.—A charter of a bank which provides that "said institution * * * shall pay to the State an annual tax of one-half of 1 per cent on each share of the capital stock, which shall be in lieu of all other taxes," limits the amount of tax on each share of the stock in the hands of the shareholder, and any subsequent revenue law of the State which imposes an additional tax on such shares in the hands of the shareholders impairs the obligation of the contract and is void.

Bank of Commerce *v.* Tennessee, 161 U. S. 140.
Shelby County *v.* Union, etc., Bank, 161 U. S. 149.
Farrington *v.* Tennessee, 95 U. S. 681.

Effect of assignment of property and franchises.—In the absence of express statutory direction, or of an equivalent implication by necessary construction, the court said, in Norfolk, etc., R. Co. *v.* Pendleton (156 U. S. 673), that—

provisions in restriction of the right of the State to tax the property or to regulate the affairs of its corporations do not pass to new corporations succeeding, by consolidation or by purchase under foreclosure, to the property and ordinary franchises of the first grantee.

See also—

Rochester R. Co. *v.* Rochester, 205 U. S. 236.
Covington, etc., Road Co. *v.* Sanford, 164 U. S. 586.
People's Gas Light, etc., Co. *v.* Chicago, 194 U. S. 17.
Wright *v.* Georgia, etc., R. Co., 216 U. S. 420.

A corporate privilege or immunity can not pass to a new corporation when the State constitution, at the time, limits the power of the State to confer such privilege or immunity.

Chicago, etc., R. Co. *v.* Minnesota, 216 U. S. 234.
San Antonio Traction Co. *v.* Altgelt, 200 U. S. 304.
Minneapolis, etc., R. Co. *v.* Gardner, 177 U. S. 332.
Keokuk, etc., R. Co. *v.* Missouri, 152 U. S. 310.
St. Louis, etc., R. Co. *v.* Berry, 113 U. S. 475.
Shields v. Ohio, 95 U. S. 321.
Trask *v.* Maguire, 18 Wall. 405.

An exemption from taxation does not pass by the conveyance passing "the title to the railroad itself, and to the franchises connected with and necessary in its construction and operation."

Louisville, etc., R. Co. *v.* Palmes, 109 U. S. 251.

See also—

St. Louis, etc., R. Co. *v.* Gill, 156 U. S. 656.
Chesapeake, etc., R. Co. *v.* Miller, 114 U. S. 185.
Morgan *v.* Louisiana, 93 U. S. 224.

Purchase at foreclosure sale—*By private parties.*—A mortgage of the franchises and property of a corporation made in the exercise of a power given by statute confers no right upon purchasers at a foreclosure sale to exist as the same corporation, but to reorganize as a new corporation subject to the laws existing at the time of the reorganization.

Norfolk, etc., R. Co. *v.* Pendleton, 156 U. S. 673.
See also—
Memphis, etc., R. Co. *v.* Arkansas, 112 U. S. 623.
Schurz *v.* Cook, 148 U. S. 406.
Vicksburg *v.* Vicksburg Waterworks Co., 202 U. S. 453.
San Antonio Traction Co. *v.* Altgelt, 200 U. S. 304.

By States.—When the State, at the foreclosure sale of a railroad company, which had a charter contract limiting the power of taxation, became the purchaser of its rights, franchises, privileges, and immunities of every kind, a purchaser from the State took the property and rights subject to a then existing constitutional provision under which a contract exemption from taxation could not be granted.

Great Northern R. Co. *v.* Minnesota, 216 U. S. 206.

To enforce statutory lien.—Immunity from taxation does not pass to the purchasers of the property and franchises of a company which enjoyed such an immunity on a sale and conveyance made under a decree rendered in a suit to enforce a statutory lien.

Pickard[1] *v.* East Tennessee, etc., R. Co., 130 U. S. 641, reversing East Tennessee, etc., R. Co. *v.* Pickard, 24 Fed. 614.
See also—
Wilson *v.* Gaines, 103 U. S. 421.

Immunities and exclusive privileges were held to have passed in the following cases:

Philadelphia, etc., R. Co. *v.* Maryland, 10 How. 392.
Tomlinson *v.* Branch, 15 Wall. 463.
Delaware Railroad Tax, 18 Wall. 228.
Central Railroad, etc., Co. *v.* Georgia, 92 U. S. 670.
Chesapeake, etc., R. Co. *v.* Virginia, 94 U. S. 726.
New Orleans Gas Co. *v.* Louisiana Light Co., 115 U. S. 654.
Tennessee *v.* Whitworth, 117 U. S. 147.
See also discussion in—
Yazoo, etc., R. Co. *v.* Adams, 180 U. S. 1.

Sale of lands exempt from taxation.—Where a statute exempted forever certain lands of the Athens University in Ohio from taxation, and the same lands were afterwards sold by the university, a subsequent statute authorizing a tax to be levied on the lands, is not a violation of the Federal Constitution.

Armstrong *v.* Athens County, 10 Ohio 235, affirmed in 16 Pet. 281.

Distinction between interest of owner of land and interest of lessee.—The contract right, under its charter, of an educational institution to be exempt from taxation as to 1,000 acres of land owned by it, does not prevent the State from assessing against

[1] This name is erroneously spelled in the reports in both cases cited. The docket shows the spelling used above.

lessees occupying part of the land their interest therein for taxation.

Jetton *v.* University, 208 U. S. 489.
Morris Canal, etc., Co. *v.* Baird, 239 U. S. 126.

Where the charter of a railroad company contained not only a limitation of taxation but also the right to rent or farm out all or any part of its exclusive right of transportation, the lessee of such railroad, which is authorized by its charter to lease and operate the railroad, holds it under the same limitation of taxation, and a statute assessing a higher tax than that authorized in the charter of the lessor company impairs the obligation of a contract.

Wright *v.* Central of Ga. R. Co., 236 U. S. 674.

Betterments and improvements of the leased road, such as the lessor naturally would have made to meet the necessities of an enlarging business, stand on the same footing as the original road, and are exempt.

Wright *v.* Louisville, etc., R. Co., 236 U. S. 687.

As to the rights of existing creditors on the consolidation of two corporations by the formation of a new one, see—

Smith *v.* Chesapeake, etc., Canal Co., 14 Pet. 45.

A tax upon the franchise of a railway company impairs the obligation of a charter exemption from any property tax other than one based on its net profits.

Wright *v.* Georgia R., etc., Co., 216 U. S. 420.

Where an act of incorporation reserves no right to repeal or amend the charter, an exemption from taxation therein granted is a contract between the State and the incorporators which the State can not impair by subsequent legislation.

Home of the Friendless *v.* Rouse, 8 Wall. 435.
Washington University *v.* Rouse, 8 Wall. 441.
Wilmington R. Co. *v.* Reid, 13 Wall. 264.
Humphrey *v.* Pegues, 16 Wall. 249.
Pacific R. Co. *v.* Maguire, 20 Wall. 43.
University *v.* People, 99 U. S. 309.
See also—
Tomlinson *v.* Jessup, 15 Wall. 459.
Asylum *v.* New Orleans, 105 U. S. 362.
Tucker *v.* Ferguson, 22 Wall. 527.
West Wisconsin R. Co. *v.* Trempealeau County, 93 U. S. 595.
Raleigh, etc., R. Co. *v.* Reid, 13 Wall. 269.
North Missouri R. Co. *v.* Maguire, 20 Wall. 62.
Williamson *v.* New Jersey, 130 U. S. 189.
Gulf, etc., R. Co. *v.* Hewes, 183 U. S. 66.

Tax exemption as applied to cases of consolidation.—A State law taxing railroad franchises held not to impair obligation of contracts as to a company formed by the consolidation of other companies which had been exempted from taxation.

Railroad Co. *v.* Maine, 96 U. S. 499.
Armstrong *v.* Athens County, 16 Pet. 281.
Philadelphia, etc., R. Co. *v.* Maryland, 10 How. 376.

Central R., etc., Co. *v.* Georgia, 92 U. S. 665.
Hoge *v.* Railroad Co., 99 U. S. 348.
Railroad Co. *v.* Commissioners, 103 U. S. 1.
Louisville, etc., R. Co. *v.* Palmes, 109 U. S. 244.
Keokuk, etc., R. Co. *v.* Missouri, 152 U. S. 301.

Construction of grants of exclusive privileges and exemption from taxation.—The power of exclusive franchise must be given in language explicit and express or necessarily to be implied from other powers, and the intention to grant exemption from taxation must be declared in clear and unmistakable terms.

Morris Canal Co. *v.* Baird, 239 U. S. 126.
Home Telephone Co. *v.* Los Angeles, 211 U. S. 265.
Detroit Citizens' R. Co. *v.* Detroit R. Co., 171 U. S. 53.
New Orleans, etc., R. Co. *v.* New Orleans, 143 U. S. 195.

Law granting exemption to terminal company properly construed by State courts as creating repealable privilege rather than contract right to exemption.

Troy Union R. Co. *v.* Mealy, 254 U. S. 47.

Bounties.—A statute of a State offering to persons and corporations, to be formed for the purpose, a bounty for every bushel of salt manufactured in the State from water obtained by boring in the State, and exempting from taxation the property used for the purpose, is not a contract, but is only a bounty law, and it may be repealed without impairing the obligation of a contract.

Salt Company *v.* East Saginaw, 13 Wall. 373.

Franchise tax.—The special franchise tax imposed by New York statute does not impair the obligation of the contracts by which the State or municipality granted the right to construct street railways in consideration of the payment of a gross sum or of the annual payment of a fixed amount where such payments are nowhere declared to be in lieu of taxes.

Metropolitan Street R. Co. *v.* New York, 199 U. S. 1.
Powers *v.* Detroit, etc., R. Co., 201 U. S. 543.
St. Louis *v.* United R. Co., 210 U. S. 266.

Withdrawal of exemption.—A special statute authorizing a city to establish a waterworks system and providing that its property "shall be and forever remain exempt from State, county, and city tax" did not tie the hands of the legislature to withdraw such exemption when at the time of the enactment of the special statute there was an existing general statute which provided that all statutes "shall be subject to amendment or repeal at the will of the legislature unless a contrary intent be therein plainly expressed."

Covington *v.* Kentucky, 173 U. S. 231.
See also—
Louisville Water Co. *v.* Kentucky, 170 U. S. 127.
Citizens' Sav. Bank *v.* Owensboro, 173 U. S. 644.
Stone *v.* Bank of Commerce, 174 U. S. 419.

Surrender of privilege of exemption.—Exemption from taxation, being a special privilege granted by the Government, is a franchise, and the nonuser for a long period may be regarded as presumptive proof of its abandonment or surrender.

Given *v.* Wright, 117 U. S. 656.

Eminent Domain[1]

In general.—This clause is not a limitation upon the power of eminent domain. The obligation of a contract is not impaired when it is appropriated to a public use and compensation made therefor. Such an exertion of power neither challenges its validity nor impairs its obligation. Both are recognized, for it is appropriated as an existing enforcible contract. It is a taking, and if compensation be made no constitutional right is violated.

Cincinnati *v.* Louisville, etc., R. Co., 223 U. S. 400.

In Galveston Wharf Co. *v.* Galveston, 260 U. S. 473, it was held that the power of eminent domain can not be contracted away.

The taking of land for public purposes is not a judicial but a legislative function, and opportunity to be heard in advance need not be given the owner. Notice by publication in condemnation proceedings is constitutionally sufficient.

Georgia *v.* Chattanooga, 264 U. S. 472.

Condemnation of shares of stockholders objecting to improvement of railroad.—The improvement of a railroad is for a public use, and the condemnation of the stock of dissenting stockholders may be made by a lessee company which has acquired more than three-fourths of the stock, when such a proceeding is authorized by statute and the purpose of the acquisition of the stock is to enable the purchaser to improve the property.

Offield *v.* New York, etc., R. Co., 203 U. S. 372.

Taking property of bridge company.—A Vermont statute created a bridge corporation and invested it with the exclusive privilege of erecting a bridge, with the right of taking tolls—a 100-year franchise. The corporation erected a bridge and enjoyed the franchise given to them by law until the institution of a proceeding under a general law authorizing county courts to lay out highways and giving them the power to take any real estate, easement, or franchise of any corporation when the public good required a public highway, and providing, of course, for compensation therefor. It was held that the statute under which the proceeding was instituted did not impair the obligation of the charter contract, but was a rightful exercise of the power of eminent domain, a franchise being property and nothing more.

West River Bridge Co. *v.* Dix, 6 How. 507.

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[1] See same subject, pp. 607 and 689.

For a case involving the taking of the property of a waterworks company, see—

Long Island Water Supply Co. *v.* Brooklyn, 166 U. S. 685.

Contracts of State affecting its governmental authority.—The State cannot, by virtue of the contract clause of the Federal Constitution, divest itself by contract of the right to exert its governmental authority in matters which, from their very nature, so concern that authority that to restrain its exercise by contract would be a renunciation of power to legislate for the preservation of society, or to secure the performance of essential governmental duties.

Pennsylvania Hospital *v.* Philadelphia, 245 U. S. 20.

Vesting property in the State by repeal of statutes.—A State legislature cannot repeal statutes confirming to private corporations property already acquired upon the faith of previous laws, and by such repeal vest the property of such corporations exclusively in the State, without the consent or default of the corporators.

Terrett *v.* Taylor, 9 Cranch 43.

Exercise of power by railroad company.—A railroad company's right to take land by eminent domain, unexecuted except by merely filing a map of the proposed route, is not vested, so as to make the condemnation of the land by the State for other purposes an impairment of the obligation of its contracts with the company, where the company was organized under general statutes providing for the alteration or repeal of corporate charters.

Adirondack R. Co. *v.* New York, 176 U. S. 335.

Reversion of property to the State at the expiration of a lease.—

Carondelet Canal Co. *v.* Louisiana, 233 U. S. 362.

See also—

Omaha *v.* Omaha Water Co., 218 U. S. 180, as to option of State to purchase.

As to taking of contract rights to easements of light, air, and access without compensation, see—

Muhlker *v.* New York, etc., R. Co., 197 U. S. 544.

General Code Ohio, sections 3677–3697, authorizing municipalities to determine necessity for taking private property without giving owner a hearing, held not invalid under this clause.

Sears *v.* Akron, 246 U. S., 242.

Contracts of States

In general.—In its broadest sense "contracts" includes agreements or compacts between the Government and its citizens, and a contract between a State and an individual, as well as between two individuals, is fully protected by the Constitution. States entering into contracts do so upon the same footing as ordinary individuals, and they can not invoke their sovereign attributes to justify an impairment of their contracts. A State legislature

may contract with an individual, and its enactments to that end become contracts within the prohibition.

Levey *v.* Stockschlager, 129 U. S. 477.
Providence Bank *v.* Billings, 4 Pet. 560.
New Jersey *v.* Yard, 95 U. S. 114.
See also—
Poindexter *v.* Greenhow, 114 U. S. 286.
Murray *v.* Charleston, 96 U. S. 445.
New Orleans Gas Co. *v.* Louisiana Light Co., 115 U. S. 660.
Hartman *v.* Greenhow, 102 U. S. 679.
Wolff *v.* New Orleans, 103 U. S. 367.

The rule that one legislature can not bind its successors does not prevent the enactment of laws in the nature of contracts which a subsequent legislature can not repeal.

State Bank of Ohio *v.* Knoop, 16 How. 389.
Ohio Life Ins. Co. *v.* Debolt, 16 How. 416.
Mechanics' Bank *v.* Debolt, 18 How. 380.
Jefferson Bank *v.* Skelley, 1 Black 436.
Hall *v.* Wisconsin, 103 U. S. 8.
Von Hoffman *v.* Quincy, 4 Wall. 554.

A grant by the United States to a State upon condition, and the acceptance thereof by the State, constitutes a contract which can not be impaired by the legislature.

McGee *v.* Mathis, 4 Wall. 155.
Head *v.* University, 19 Wall. 531.
Memphis *v.* U. S., 97 U. S. 297.
Bowditch *v.* Boston, 101 U. S. 19.
Salt Co. *v.* East Saginaw, 13 Wall. 377.

Compact between States and the United States limiting right to issue fishing licenses in Columbia River is valid and not impaired by a statute imposing additional restrictions.

Olin *v.* Kitzmiller, 259 U. S. 260.

A State can no more impair by legislation the obligation of its own contracts than it can impair the obligation of the contracts of individuals.

Woodruff *v.* Trapnall, 10 How. 207.
See also—
Providence Bank *v.* Billings, 4 Pet. 560.
Green *v.* Biddle, 8 Wheat. 1.
Fletcher *v.* Peck, 6 Cranch 127.
Pearsall *v.* Great Northern R. Co., 161 U. S. 672.
Hawkins v. Barney, 5 Pet. 457.
Sands *v.* Manistee River Imp. Co., 123 U. S. 288.
Covington, etc., Brdg. Co. *v.* Kentucky, 154 U. S. 204.
Mobile Gas Co. *v.* Patterson, 288 Fed. 884.

With the United States.—Acceptance by a State of an act of Congress granting to the State land for the construction of canals, which provided that such canals, "when completed or used, shall be and forever remain public highways for the use of the Government of the United States," does not constitute a contract by the State for the perpetual maintenance of such canals as public highways, but a proper construction of the provision is that the Government should be entitled to the free use

of the canals so long as, and not longer than, they were maintained as public highways, and that an act of the legislature leasing the lands does no violence to the contract laws of the Constitution.

Walsh *v.* Columbus, etc., R. Co., 176 U. S. 475.
See also—
Wright *v.* Columbus, etc., R. Co., 176 U. S. 481.
U. S. *v.* Great Falls Mfg. Co., 21 Md. 119 (water supply for Washington, D. C.).

State treasury warrants.—When the officers of a State, pursuant to its statutes, have received State treasury warrants, as payment for obligations due the State, they have acted for the State in carrying out an offer upon its part which the State has the legal capacity to make and carry out, and a State has no authority subsequently to enact a statute upon the assumption that the treasury warrants were illegally issued.

Houston, etc., R. Co. *v.* Texas, 177 U. S. 98.
See also—
Missouri *v.* Walker, 125 U. S. 339, as to employment of agent to collect State claim.

Legislative grants.—A legislative grant, although in the form of a statute, is a contract within this clause, whether made directly, or indirectly through a municipal corporation, and a statute repealing a prior grant is void. The prohibition extends to all legislation whereby the estate granted will be in any wise impaired.

Fletcher *v.* Peck, 6 Cranch 137.
Baltimore Trust, etc., Co. *v.* Baltimore, 64 Fed. 153.
Rice *v.* Railroad Co., 1 Black 358.
See also—
Terrett *v.* Taylor, 9 Cranch 50.
Pawlet *v.* Clark, 9 Cranch 332.
Pennoyer *v.* McConnaughy, 140 U. S. 25.
Walla Walla *v.* Walla Walla Water Co., 172 U. S. 9.
Davis *v.* Gray, 16 Wall. 203.
Commissioners *v.* Lucas, 93 U. S. 114.
Jackson *v.* Lamphire, 3 Pet. 289.
League *v.* DeYoung, 11 How. 202.
Vanhorne *v.* Dorrance, 2 Dall. 304.
Hagar *v.* Reclamation Dist., 111 U. S. 701.
Mulligan *v.* Corbins, 7 Wall. 491.
Hamilton *v.* Brown, 161 U. S. 256.

Where, after a township had subscribed for the stock of a railroad company, and had agreed to pay for it in valid, negotiable bonds, an act was passed by the legislature requiring the bonds to be registered and certified before they should become valid, such an act did not impair the contract.

Hoff *v.* Jasper County, 110 U. S. 53.
See also—
Railroad Co. *v.* Falconer, 103 U. S. 821.
County of Clay *v.* Society for Savings, 104 U. S. 590.
Galveston, etc., R. Co. *v.* Texas, 170 U. S. 226.
Arkansas Sou. R. Co. *v.* Louisiana, etc., R. Co., 218 U. S. 431.

Licenses.—A license granted by a State or a municipal corporation is not a contract within the meaning of this prohibition; it is merely the grant of a privilege which may be revoked or may have additional conditions imposed upon its enjoyment, unless otherwise provided in the State constitution.

Phalen *v.* Virginia, 8 How. 168.

See also—

Home Ins. Co. *v.* Augusta, 93 U. S. 122.
Postal Tel. Co. *v.* Charleston, 153 U. S. 695.
Schurz *v.* Cook, 148 U. S. 397.
Rundle *v.* Canal Co., 14 How. 89.
Stone *v.* Mississippi, 101 U. S. 819.
Beer Co. *v.* Massachusetts, 97 U. S. 32.

Purchase of public lands.—A grant from the State, passing an estate into the hands of a purchaser for a valuable consideration, is a contract, and is protected by this clause from any legislation impairing it and rendering it null and void.

Fletcher *v.* Peck, 6 Cranch 127.

See also—

Sullivan *v.* Texas, 207 U. S. 416, where it was held that the substantial elements of a contract between the claimant under a Mexican land grant and the State were lacking.

Jackson *v.* Lamphire, 3 Pet. 280 (investigation of land titles by State).

Reitler *v.* Harris, 223 U. S. 437 (forfeiture).

The mere application to purchase State lands and the expenditure of money for a survey of the lands do not constitute a contract with the State, but the lands may be withdrawn from sale before any right becomes consummated.

Banning Co. *v.* California, 240 U. S. 142.
Campbell *v.* Wade, 132 U. S. 37.
Waggoner *v.* Flack, 188 U. S. 603.
Livingston *v.* Moore, 7 Pet. 550.

Lease of State land.—Though in private contracts, in the absence of a covenant or condition to the contrary, there is an implied covenant in a lease that the lessor shall pay all taxes and assessments levied on the leased land during the term, a ruling of a State court that such general rule, so far as concerns taxation, does not apply to leases by the State, does not impair a contract right of a lessee of State land.

Trimble *v.* Seattle, 231 U. S. 683.

Disposition of escheated and confiscated property.—Where an undivided one-half interest in certain escheated property was granted by a statute to A, it was held that a statute releasing to B whatever "interest in such land might rightfully belong to the State" is not void as impairing the obligation of contracts.

Mulligan *v.* Corbins, 7 Wall. 487.

A statute providing for escheat proceedings, and a determination of the rights of the State as against all possible claimants, after actual notice to all known claimants and constructive notice to all unknown ones, does not impair the obligation of any contract contained in the grant under which the deceased

held over, whether that grant was from the State or from a private person.

Hamilton *v.* Brown, 161 U. S. 256.

State debts and liabilities.—The creditor of a State has a contract right which the legislature can not impair by subsequent enactment.

Wabash, etc., Co. *v.* Beers, 2 Black 452.
Curran *v.* Arkansas, 15 How. 304.
Louisiana *v.* Jumel, 107 U. S. 711.
Durkee *v.* Board of Liquidation, 103 U. S. 646.
Hall *v.* Wisconsin, 103 U. S. 5.
Guaranty Co. *v.* Board of Liquidation, 105 U. S. 624.
Gilman *v.* Sheboygan, 2 Black 510.

After the payment of an obligation due the State a contract is implied that payments shall neither be repudiated nor denied, and a statute giving the State a right of action for debts already paid by warrant on the ground that such payments were void impairs the obligation of that contract.

Houston, etc., R. Co., *v.* Texas, 177 U. S. 98.
See also—
Antoni *v.* Greenhow, 107 U. S. 770.
Poindexter *v.* Greenhow, 114 U. S. 278.
Chaffin *v.* Taylor, 114 U. S. 309; 116 U. S. 567.
Royall *v.* Virginia, 116 U. S. 578.
McGahey *v.* Virginia, 135 U. S. 701.
In re Ayers, 123 U. S. 495.

Suits against the State.[1]—*In general.*—A State can not, without its consent, be sued in a circuit court of the United States by one of its own citizens upon a suggestion that the case is one that arises under the Constitution and laws of the United States. While a State can not be compelled by suit to perform its contracts, any attempt on its part to violate property or rights acquired under its contracts may be judicially resisted; and any law impairing the obligation of contracts under which such property or rights are held is void and powerless to affect their enjoyment.

Hans *v.* Louisiana, 134 U. S. 1.[2]

When a State becomes a party to a contract the same rules of law are applied to her as to private persons under like circumstances. When she or her representatives are properly brought into the forum of litigation, neither she nor they can assert any right or immunity as incident to her political sovereignty.

Davis *v.* Gray, 16 Wall. 232.
Railroad Co. *v.* Tennessee, 101 U. S. 338.
Railroad Co. *v.* Alabama, 101 U. S. 833.

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[1] As to suits against the United States on contracts, see subject "To which the United States shall be a party," under Art III, sec. 2, cl. 1, p. 457.

[2] See also eleventh amendment, p. 638, which it was said in the Hans case was a reversal of the Supreme Court's decision in Chisholm *v.* Georgia (2 Dall. 419), by the will of the whole people.

Law consenting to be sued not a contract.—A State may pass a law allowing the entry of suit and then dismiss the suit in case of failure of the plaintiff to comply with certain requirements without impairing the obligation of any contract.

Beers *v.* Arkansas, 20 How. 528.

The repeal of a right to have a claim against the State examined and recommended by the supreme court to the legislature is no impairment of the obligation of a contract, nor does the decision of the State court that an amendment to the State constitution repealed the court's authority to examine and recommend such a claim have that effect.

Baltzer *v.* North Carolina, 161 U. S. 245.

Limitation of eleventh amendment.—Suits can not be maintained against the States by citizens of other States, though they present cases arising under the Constitution.

Louisiana *v.* Jumel, 107 U. S. 711.
Hagood *v.* Southern, 117 U. S. 52.

Where the contract is between the individual and the State no action will lie against the State, and any action founded upon it against defendants who are officers of the State, the object of which is to enforce its specific performance by compelling those things to be done by the defendants which, when done, would constitute a performance by the State, or to forbid the doing of those things which, if done, would be merely breaches of the contract by the State, is in substance a suit against the State itself, and equally within the prohibition of the Constitution.

In re Ayers, 123 U. S. 504.

State constitutions as contracts.—A State constitution is not a contract within the meaning of this clause. It is the fundamental law of the State and as such may be construed and carried into effect by the State courts, without review by the Federal Supreme Court, except in cases where what is done comes, or is supposed to come, in conflict with the Federal Constitution.

Church *v.* Kelsey, 121 U. S. 282.

No rights of contract can be vested under a constitutional provision which a subsequent constitution may not destroy without impairing the obligation of the contract within the sense of this provision, and an ordinary act of legislation can not have that effect.

New Orleans *v.* Houston, 119 U. S. 275.

A statute as a contract.—A legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the State within the protection of this clause.

New Jersey *v.* Yard, 95 U. S. 114.

General encouragements, held out to all persons indiscriminately, to engage in a particular trade or manufacture, whether such encouragement be in the shape of bounties or drawbacks or other advantage, are always under the legislative control and may be discontinued at any time.

Salt Company *v.* East Saginaw, 13 Wall. 379.

See also—

Illinois Cent. R. Co. *v.* Illinois, 146 U. S. 460, as to cession of control of submerged and overflowed land.

Newton v. Commissioners, 100 U. S. 549, as to establishment and removal of county seats.

Lobrano *v.* Nelligan, 9 Wall. 295, as to liability of father's estate when acting as guardian of minor son.

Statute creating forfeiture.—State statute which seeks to convert covenant in prior legislative contract into condition subsequent and to impose as penalty for violation the forfeiture of valuable property, impairs obligation of contract.

Columbia Ry. *v.* South Carolina, 261 U. S. 236.

Contracts of Municipalities

A valid contract of a municipal corporation is just as sacred from legislative interference or destruction as one made between individual citizens.

Shinn *v.* Cunningham, 94 N. W. 941.

In a proceeding to condemn property for a public street there is nothing in the nature of a contract. The proceeding to ascertain the benefit or losses which will accrue to the owner of property when taken for public use, and thus the compensation to be paid to him, is in the nature of an inquest on the part of the State and is necessarily under her control.

Garrison *v.* New York, 21 Wall. 203.

See also—

Mead *v.* Portland, 200 U. S. 148, as to closing of street after granting wharfage privileges.

New Orleans Taxpayers *v.* New Orleans, 237 U. S. 33, as to free water for sewerage system.

Oshkosh Waterworks Co. *v.* Oshkosh, 187 U. S. 443, as to mode of enforcing claim against corporation.

General implications may not be resorted to for the purpose of converting a grant of a municipality which is, upon its face a mere license, into a contract for a stated period or in perpetuity.

Seaboard, etc., R. Co. *v.* Raleigh, 242 U. S. 15.

The fact that a contract made by a city with a water company has received final judicial interpretation does not, as far as the city's rights are concerned, in any way affect the power of the State to change the same by subsequent legislation.

New Orleans *v.* New Orleans Waterworks Co., 142 U. S. 79.
Long Island Water Supply Co. *v.* Brooklyn, 166 U. S. 685.
Chicago, etc., R. Co. *v.* Nebraska, 170 U. S. 57.
Worcester *v.* Worcester, etc., R. Co., 196 U. S. 539.
Northern Pac. R. Co. *v.* Duluth, 208 U. S. 583.
Superior Water Co. *v.* Superior, 263 U. S. 125.
Watertown *v.* Eastern Dakota Elec. Co., 296 Fed. 832.

Contract between street railway and municipality remains binding though agreed rates become inadequate.

Georgia Ry. *v.* Decatur, 262 U. S. 432.

Georgia Ry. *v.* College Park, 262 U. S. 441.

A State legislature, unless prohibited by constitutional provisions, may authorize a municipality to contract with a street railway company as to the rates of fare, so as to bind any future common council, during the specified period, from altering or in any way interfering therewith.

Detroit *v.* Detroit, etc., R. Co., 184 U. S. 368.

See also—

Freeport Water Co. *v.* Freeport, 180 U. S. 587.

Home Tel. Co. *v.* Los Angeles, 211 U. S. 265.

Minneapolis *v.* Minneapolis, etc., R. Co., 215 U. S. 417.

Boise Artesian, etc., Water Co. *v.* Boise City, 230 U. S. 84.

Wyandotte County Gas Co. *v.* Kansas, 231 U. S. 622.

When municipal corporations issue bonds, being duly authorized to do so, they are to that extent to be deemed private corporations, and their obligations are secured by all the guarantees which protect the engagements of private individuals.

Mobile *v.* Watson, 116 U. S. 304.

Hendrickson *v.* Apperson, 245 U. S. 105.

A public service corporation is bound by rates fixed by a valid contract between it and a city even if the rates become so unremunerative that, if imposed under the police power, they would be confiscatory in violation of the Fourteenth Amendment.

Opelika *v.* Opelika Sewer Co., 265 U. S. 215.

A State may authorize a municipal corporation to establish by contract the rates to be charged by a public service corporation for a definite term, not grossly unreasonable in time; and the effect of such a contract is to suspend, during its life, the governmental power of regulating the rates. Where a public service corporation and a municipality, having power to contract as to rates, exert it by fixing them for a particular time, the rates are enforceable under the obligation of the contract, even though they become "confiscatory."

Public Service Co. *v.* St. Cloud, 265 U. S. 352.

A municipality may by contract deprive itself of right to tax franchise.

Denver *v.* Stenger, 295 Fed. 809.

Charters of Public Corporations as Contracts

In general.—Public corporations, such as counties, towns, and cities, are created by authority of the State legislature and invested with subordinate legislative powers to be exercised for local purposes connected with the public good. The charters of such corporations can not be considered contracts within the protection of this clause, and the legislature has unlimited power to alter, annul, or repeal them unless the State constitution provides otherwise.

Bissell *v.* Jeffersonville, 24 How. 294.

Barnes *v.* D. C., 91 U. S. 540.

Oshkosh Waterworks Co. *v.* Oshkosh, 187 U. S. 437.
Laramie County *v.* Albany County, 92 U. S. 308.
New Orleans *v.* New Orleans Waterworks Co., 142 U. S. 79.
Maryland *v.* Baltimore, etc., R. Co., 3 How. 550.
Rogers Locomotive Works *v.* Emigrant Co., 164 U. S. 576.
Terrett *v.* Taylor, 9 Cranch 52.
Commissioners *v.* Lucas, 93 U. S. 115.
Railroad Co. *v.* Ellerman, 105 U. S. 172.
Board of Liquidation *v.* Louisville, etc., R. Co., 109 U. S. 221.
U. S. *v.* Thoman, 156 U. S. 360.
Mobile *v.* Watson, 116 U. S. 305.
Von Hoffman *v.* Quincy, 4 Wall. 554.
Galena *v.* Amy, 5 Wall. 709.
Riggs *v.* Johnson County, 6 Wall. 194.
Wolff *v.* New Orleans, 103 U. S. 366.
Louisiana *v.* Pilsbury, 105 U. S. 288.
Gozzler *v.* Georgetown, 6 Wheat. 598.
Railroad Co. *v.* Hamersley, 104 U. S. 1.
Home Ins. Co. *v.* Augusta, 93 U. S. 122.
Hoadley *v.* San Francisco, 124 U. S. 639.
Grenada County *v.* Brogden, 112 U. S. 272.
Marsh *v.* Fulton County, 10 Wall. 684.
Zane *v.* Hamilton County, 189 U. S. 370.
Railroad Co. *v.* Falconer, 103 U. S. 821.
Aspinwall *v.* Commissioners, 22 How. 377.
Broughton *v.* Pensacola, 93 U. S. 269.
County of Moultrie *v.* Savings Bank, 92 U. S. 635.
Scotland County *v.* Thomas, 94 U. S. 688.
Los Angeles *v.* Los Angeles Water Co., 177 U. S. 583.
Newport Light Co. *v.* Newport, 151 U. S. 540.
Garrison *v.* New York, 21 Wall. 196.
Murray *v.* Charleston, 96 U. S. 443.

If the act of incorporation be a grant of political power, if it create a civil institution to be employed in the administration of the Government, or if the funds of the institution be public property, or if the State, as a government, be alone interested in its transactions, the subject is one in which the legislature of the State may act according to its own judgment, unrestrained by any limitation of its powers imposed by the Constitution.

Dartmouth College *v.* Woodward, 4 Wheat. 629.

Municipal corporations are mere instruments of the State for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure. There is no contract between the State and the public that the charter of a city shall not at all times be subject to legislative control.

Meriwether *v.* Garrett, 102 U. S. 472.
Covington *v.* Kentucky, 173 U. S. 241.
Williamson *v.* New Jersey, 130 U. S. 190.
East Hartford *v.* Hartford Brdg. Co., 10 How. 532.

Enlarging town by annexation.—A statute authorizing the annexation of two cities, contiguous or in close proximity to each

other, does not impair any contract obligation between the citizens and taxpayers of the smaller city and the corporation itself.

Hunter *v.* Pittsburgh, 207 U. S. 161.
Long Island Water Supply Co. *v.* Brooklyn, 166 U. S. 685.
Mt. Pleasant *v.* Beckwith, 100 U. S. 514.

As affecting obligation of waterworks company.—Where an ordinance has granted the privilege to construct and maintain water supply works at a time when a statute imposed upon a waterworks company the obligation to furnish water for fire purposes to the city free of charge, a subsequent statute requiring such companies to furnish water for such purposes at reasonable rates does not deprive the city of any contract right.

Boise Artesian, etc., Co. *v.* Boise City, 230 U. S. 84.
Trenton *v.* New Jersey, 262 U. S. 182.

School districts.—A statute changing the boundaries of a school district, giving to the new district the property within its limits which had belonged to the former district, and requiring the new district to assume and pay the debts and obligations of the old district, does not impair the obligation of contracts.

Kies *v.* Lowrey, 199 U. S. 233.

State banks.—A State by becoming interested with others in a banking corporation, or by owning all the capital stock, does not impart to that corporation any of its privileges or prerogatives; it lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege in respect to those transactions not derived from the charter.

Curran *v.* Arkansas, 15 How. 309.

A State statute requiring the managers of an insolvent bank belonging to the State to hold its assets appropriated to the payment of certain specified debts, which has the effect to appropriate the assets to pay the debts of the State to the prejudice of bill holders and other creditors of the bank, impairs the obligation of contracts and is void.

Barings *v.* Dabney, 19 Wall. 1.

Charters of Private Corporations as Contracts

In general.—If the foundation of a corporation is private, the corporation itself is private, notwithstanding it is under charter from the Government, and no matter how extensive its uses.

Dartmouth College *v.* Woodward, 4 Wheat. 629.
University *v.* Indiana, 14 How. 276.
State Bank of Ohio *v.* Knoop, 16 How. 369.

The right of a corporation to regulate its own charges and tolls may be given by charter in such terms as to constitute a contract which the legislature can not impair; but a claim of immunity from legislative control of tolls and charges to be exacted is subject to the same principles of construction as a grant of immunity from taxation, and will never be presumed. The power of the State to limit the amount of charges by *quasi*

public corporations is a governmental power and can not be bargained away except by words of positive grant or their equivalent. The simple grant of a right to take tolls does not amount to a contract that the State shall thereafter refrain from regulating the tolls to be taken, nor does a provision that rates to be charged shall never exceed a certain figure amount to a contract by the State with the corporation that the legal rate shall never be reduced below that amount. Even where a charter gives the absolute right to regulate charges, the State may empower a commission to see that the corporation keeps within its charter powers and to prevent unjust discrimination.

Los Angeles *v.* Los Angeles Water Co., 177 U. S. 580.
Covington, etc., Co. *v.* Sandford, 164 U. S. 578.
Railroad Commission Cases, 116 U. S. 325.
Chicago, etc., R. Co. *v.* Minnesota, 134 U. S. 418.
Georgia R. R., etc., Co. *v.* Smith, 128 U. S. 174.
Stone *v.* Yazoo, etc., R. Co., 62 Miss. 607.
Minneapolis, etc., R. Co. *v.* Minnesota, 134 U. S. 467.
Peik *v.* Chicago, etc., R. Co., 94 U. S. 176.
Chicago, etc., R. Co. *v.* Iowa, 94 U. S. 162.
Beer Co. *v.* Massachusetts, 97 U. S. 25.

The charter of a private corporation is a contract between the State and the incorporators and within the provision of the Constitution prohibiting legislation impairing the obligation of contracts. Whatever is granted is secured, subject only to the limitation and reservation in the charter or in the laws or constitution which govern it.

Delaware Railroad Tax, 18 Wall. 225.
Atlantic Coast Line *v.* Goldsboro, 232 U. S. 548.
Chicago, etc., R. Co. *v.* Iowa, 94 U. S. 161.
Wilmington, etc., R. Co. *v.* Reid, 13 Wall. 266.
Raleigh, etc., R. Co. *v.* Reid, 13 Wall. 269.
The Binghamton Bridge, 3 Wall. 73.
Dartmouth College *v.* Woodward, 4 Wheat. 627.

Any contract which a State actually enters into when granting a charter to a private corporation is within the protection of this clause. In this connection, however, it is to be kept in mind that it is not the charter which is protected, but only any contract the charter may contain. If there is no contract, there is nothing in the grant on which the Constitution can act.

Stone *v.* Mississippi, 101 U. S. 816.

As to requiring transfer of stock of corporation to be filed with secretary of state, see—

Henley *v.* Myers, 215 U. S. 373.

A charter of a bank, giving ordinary powers which are supposed to be necessary for the usual objects of such association, is a contract.

Providence Bank *v.* Billings, 4 Pet. 558.

A grant to lay pipes and conduits in the streets of a municipality, dependent only upon acceptance, is not to be regarded as accepted foot by foot as pipes are laid, but in an entirety for

all the streets of the municipality; and after acceptance and preparation for compliance with the offer the grant can not be withdrawn as to the streets in which pipes have not been laid. Such action would impair the contract.

Russell *v.* Sebastian, 233 U. S. 195.

Nature of corporate charter and extent of legislative power.—The charter of a private corporation is a contract which the State, under the inhibition of the Constitution, can not impair.

Dartmouth College *v.* Woodward, 4 Wheat. 627.
West River Brdg. Co. *v.* Dix, 6 How. 531.
Bridge Props. *v.* Hoboken Co., 1 Wall. 146.
Miller *v.* State, 15 Wall. 488.
Delaware Railroad Tax, 18 Wall. 225.
Chicago, etc., R. Co. *v.* Iowa, 94 U. S. 161.
Edwards *v.* Kearzey, 96 U. S. 607.
Fletcher *v.* Peck, 6 Cranch 87.
Terrett *v.* Taylor, 9 Cranch 43.
Pawlet *v.* Clark, 9 Cranch 292.
Dodge *v.* Woolsey, 18 How. 331.
Mechanics', etc., Bank *v.* Debolt, 18 How. 380.
Jefferson Bank *v.* Skelly, 1 Black 436.

A corporate franchise, granted to and accepted by a private corporation, is in the nature of a legal estate and a contract within the obligation clause of the Constitution. The grant of a franchise is not distinguishable from a grant of any other property, and an ordinance which amounts to a proposition to grant a franchise in consideration of the construction or operation of a street railroad, or to lay gas or water pipes in streets, is a contract unimpairable by the State; such a franchise having been granted to one railroad can not be in effect repealed by a subsequent grant of the same privilege to another corporation.

Pennsylvania College Cases, 13 Wall. 212.
Dartmouth College *v.* Woodward, 4 Wheat. 700.
City Ry. *v.* Citizens' R. R., 166 U. S. 567.
New Orleans, etc., R. Co. *v.* Delamore, 114 U. S. 510.

Admission of foreign corporation.—When a State has induced a corporation to enter it by the granting of a franchise, which is in the nature of a contract, then it is protected in the enjoyment thereof by this clause.

Chicago, etc., R. Co. *v.* Ludwig, 156 Fed. 152; appeal dismissed per stipulation in 215 U. S. 615.
American Smelting Co. *v.* Colorado, 204 U. S. 103.
National Council *v.* State Council, 203 U. S. 151.

When a foreign railroad corporation is permitted to construct and operate its road through territory in another State upon prescribed terms and conditions the right of the company to enjoy the privileges so obtained can not subsequently be burdened with other conditions except such as the State, in the exercise of its police powers for purposes of taxation and for other public objects, may legally impose in respect to business carried on and property situated within its limits.

New York, etc., R. Co. *v.* Pennsylvania, 153 U. S. 643.

The issuance of a certificate of stock to a member of a foreign loan association, and his application for a loan, made before the passage of a statute restricting the right of the association to do business in the State, constitute a contract the obligation of which can not be impaired by such statute; and therefore a loan made on that application, after the statute was passed, and to which his contract gave him a right, is valid, notwithstanding the statute.

Bedford *v.* Eastern B. & L. Assn., 181 U. S. 227.

As to personal liability of stockholders of foreign corporation, see—

Pinney *v.* Nelson, 183 U. S. 144.

Organized under general law.—A charter of a private corporation organized under a general law is as inviolable as that of a corporation organized under a special charter.

Miller *v.* State, 15 Wall. 478.

A company, although organized under a general statute, may nevertheless thereby enter into and obtain a contract from the State which may be of such a nature that it can only be altered in case power to alter was, prior thereto, provided for in the constitution or legislation of the State.

Stanislaus County *v.* San Joaquin, etc., Co., 192 U. S. 206.

A general railroad law making provision for the creation of a new corporation upon the reorganization of a railroad by the purchaser at a foreclosure sale does not constitute a contract protected by the Constitution.

Grand Rapids, etc., R. Co. *v.* Osborn, 193 U. S. 28.

Dissolution of corporation.—A private corporation may be dissolved by the legislature or by judicial sentence, and such dissolution does not impair the obligation of contracts with creditors any more than the death of an individual impairs the obligation of his contracts. The obligation survives, and the creditors may enforce their claims against any property belonging to the corporation, and every creditor is presumed to contract with reference to the possibility of dissolution of the corporate body.

Mumma *v.* Potomac Co., 8 Pet. 281.

Dartmouth College charter not dissolved by the Revolution.—In the Dartmouth College Case (4 Wheat. 651) it was held that the charter was not dissolved by the Revolution. The court said:

> By the Revolution the duties, as well as the powers, of Government devolved on the people of New Hampshire. * * * The obligations then which were created by the charter to Dartmouth College were the same in the new that they had been in the old government. The power of the Government was also the same. A repeal of this charter at any time prior to the adoption of the present Constitution of the United States would have been an extraordinary and unprecedented act of power, but one which could have been contested only by the restrictions upon the legislature, to be found in the constitution of the State.

Amendment or alteration of charter—*In general.*—The legislature is precluded from altering or amending a corporate charter unless such power be reserved by the act of incorporation or by some prior general law. Such a reservation enters into and becomes a part of the charter of every corporation organized subject to it, and no question of the impairment of contract obligations can arise where a corporation has accepted its charter subject to the State's power to alter or amend it.

Holyoke Co. *v.* Lyman, 15 Wall. 511.
Miller *v.* State, 15 Wall. 495.
Sioux City, etc., R. Co. *v.* Sioux City, 138 U. S. 108.
Greenwood *v.* Freight Co., 105 U. S. 17.
New Jersey *v.* Yard, 95 U. S. 113.
Chicago, etc., R. Co. *v.* Minnesota, 134 U. S. 455.
Hamilton Gaslight Co. *v.* Hamilton City, 146 U. S. 270.
Pennsylvania R. Co. *v.* Miller, 132 U. S. 83.
Bienville, etc., Water Co. *v.* Mobile, 186 U. S. 222.

The reservation of this power in the State constitution or in general laws on the subject of corporations or in the special act of incorporation relieves amendatory legislation from the operation of this clause of the Constitution.

Sherman *v.* Smith, 1 Black 592.
Pennsylvania College Cases, 13 Wall. 212.
Stone *v.* Wisconsin, 94 U. S. 182.
Railway Co. *v.* Philadelphia, 101 U. S. 539.
Close *v.* Glenwood Cemetery, 107 U. S. 476.
Spring Valley Waterworks *v.* Schottler, 110 U. S. 348.
Beer Company *v.* Massachusetts, 97 U. S. 25.
Sinking Fund Cases, 99 U. S. 721.
Jefferson College *v.* Washington & J. College, 13 Wall. 190.
Missouri Pac. R. Co. *v.* Kansas, 216 U. S. 262.
Head *v.* University, 19 Wall. 530.
Covington *v.* Kentucky, 173 U. S. 231.
Los Angeles *v.* Los Angeles City Water Co., 177 U. S. 558.
Northern Cent. R. Co. *v.* Maryland, 187 U. S. 258.

Educational and charitable institutions.—An eleemosynary institution was "incorporated for the purpose of perpetuating the application of the bounty of the donors to the specified objects of that bounty, and its trustees or governors were originally named by the founder and invested with the power of perpetuating themselves." The charter was granted by the Crown, and the corporation was created, capable of receiving and distributing forever, according to the will of the donors, the donations which should be made to it. The consideration for which they stipulated was the perpetual application of the fund to its object in the mode prescribed by themselves. This was plainly a contract to which the donors, the trustees, and the Crown, to whose rights and obligations the State succeeded, were the original parties. It was a contract made on a valuable consideration for the security and disposition of property on the faith of which real and personal estate had been conveyed

to the corporation, and was therefore a contract the obligation of which could not be impaired without violating the Constitution.

Dartmouth College *v.* Woodward, 4 Wheat. 641.

In this case it appeared that by the charter the whole power of governing the college, of appointing and removing tutors, of fixing their salaries, of directing the course of study to be pursued by the students, and of filling vacancies created in their own body vested in the trustees, and that on the part of the Crown it was expressly stipulated that the corporation thus constituted should continue forever, and that the number of trustees should forever consist of 12 and no more. It was held that a statute increasing the number of trustees and giving the appointment of the additional members to the executive of the State, and creating a board of overseers to consist of 25 persons, of whom 21 were also appointed by the executive, who had power to inspect and control the most important acts of the trustees, constituted such a change as impaired the obligation of the charter contract.

See also—
Printing House *v.* Trustees, 104 U. S. 711.
Vincennes University *v.* Indiana, 14 How. 275.
Bryan v. Board of Education, 151 U. S. 647.

Extent and exercise of reserved power.—Where the power to alter a corporate charter is reserved it may be exercised to almost any extent to carry into effect the original purposes of the grant or to secure due administration of the corporation's affairs, but it must be exercised reasonably, in good faith, and consistent with the object of incorporation, and it should not be allowed to extend beyond the terms in which it is expressed.

Miller *v.* New York, 15 Wall. 497.
Shields *v.* Ohio, 95 U. S. 324.
New Jersey *v.* Yard, 95 U. S. 113.
See also—
Hamilton Gaslight Co. *v.* Hamilton City, 146 U. S. 270.
Bienville Water, etc., Co. *v.* Mobile, 186 U. S. 223.
Spring Valley Waterworks *v.* Schottler, 110 U. S. 355.
Louisville Gas Co. *v.* Citizens' Gas Co., 115 U. S. 698.
Chicago, etc., R. Co. *v.* Iowa, 94 U. S. 162.
Holyoke Co. *v.* Lyman, 15 Wall. 500.
Denny *v.* Bennett, 128 U. S. 495.
Looker *v.* Maynard, 179 U. S. 46.
Berea College *v.* Kentucky, 211 U. S. 45.
Adirondack R. Co. *v.* New York, 176 U. S. 335.

Under the reserved power to alter or amend a charter the legislature may make any alterations or amendments which do not defeat or substantially impair the object of grants or rights vested thereunder. Rights acquired which do not constitute part of the contract of incorporation, however, stand upon a different footing. A contractual exemption from taxation upon consider-

ation of certain payments can not be changed under the reserved power so as to continue the obligation in full and yet withdraw the exemption, and the imposition of a tax contrary to a charter exemption is not a legitimate exercise of the reserved power merely to dissolve a corporation.

Holyoke Co. *v.* Lyman, 15 Wall. 522.
Railroad Co. *v.* Maine, 96 U. S. 510.
Stearns *v.* Minnesota, 179 U. S. 240.
Asylum *v.* New Orleans, 105 U. S. 369.
Atchison, etc., R. Co. *v.* Matthews, 174 U. S. 104.
Close *v.* Glenwood Cemetery, 107 U. S. 466.
Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.

Power to repeal a charter.—The reservation of power to repeal or revoke corporate charters is valid. If the power to repeal depends on the abuse or misuse of corporate privileges, it is not necessary that such abuse or misuse should be judicially ascertained, and the forfeiture of a corporation's license to do business in a State, for violation of the act under which the license was given, violates no contract obligation.

Bridge Co. *v.* U. S., 105 U. S. 481.
Crease *v.* Babcock, 23 Pick. 334.
Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 47.
See also—
Lake Shore, etc., R. Co. *v.* Smith, 173 U. S. 690.
Monongahela Nav. Co. *v.* U. S., 148 U. S. 344.
Curran *v.* Arkansas, 15 How. 312.
Peik *v.* Northwestern R. Co., 94 U. S. 164.
Turnpike Co. *v.* Illinois, 96 U. S. 63.
Greenwood *v.* Freight Co., 105 U. S. 13.
Grand Trunk, etc., R. Co. *v.* South Bend, 227 U. S. 544.
Owensboro *v.* Cumberland Tel., etc., Co., 230 U. S. 58.
Blair *v.* Chicago, 201 U. S. 400.
Cosmopolitan Club *v.* Virginia, 208 U. S. 378.
Southern Pac. Co. *v.* Portland, 227 U. S. 559.

Forfeiture of charter.—An Ohio statute provided that on the failure of a city gas company to extend its lines, make connections, or perform certain other duties, when required to do so by the municipal authorities, the charter of such company shall be forfeited, and the city be at liberty to establish and maintain gas works of its own. Held, that the grant of such power to a city by the legislature does not impair contracts, although the value of the existing company's franchise is diminished thereby.

Hamilton Gaslight Co. *v.* Hamilton, 146 U. S. 258.
Chicago Life Ins. Co. *v.* Needles, 113 U. S. 574.

No question can arise as to the impairment of the obligation of a contract when the company has accepted all of its corporate powers subject to the reserved power of the State to modify its charter and to impose additional burdens upon the enjoyment of its franchise.

Sioux City St. R. Co. *v.* Sioux City, 138 U. S. 108.
Ramapo Water Co. *v.* New York, 236 U. S. 579.
Missouri Pac. R. Co. *v.* Kansas, 216 U. S. 262.

The mere form adopted by the legislature in conferring a right on a corporation can not be controlling, for if it were so the provisions of a State constitution inhibiting the granting of an irrepealable charter, instead of being commanding and prohibitive, would merely be precatory and advisory.

Northern Cent. R. Co. *v.* Maryland, 187 U. S. 269.

Affecting mode of voting by stockholders.—A power, reserved by the constitution of a State to its legislature, to alter, amend, or repeal future acts of incorporation, authorizes the legislature, in order "to secure the minority of stockholders, in corporations organized under general laws, the power of electing a representative membership in boards of directors," to permit each stockholder to cumulate his votes upon any one or more candidates for directors.

Looker *v.* Maynard, 179 U. S. 51.

Railway advertising signs.—There is no such obligation arising out of a contract between a State and an advertising company, or between such company and a carrier, as to prevent a city from enforcing an ordinance prohibiting the use of advertising vehicles on the streets as applied to a corporation operating automobile stages.

Fifth Ave. Coach Co. *v.* New York, 221 U. S. 467.

Power reserved—(a) By a constitutional provision.—Where the State constitution reserves the right to repeal, alter, or amend the charters of corporations, all charters granted by the legislature are subject to such provision, and therefore are wanting in that attribute of irrevocability which is essential to bring them within the intendment of this clause.

Northern Cent. R. Co. *v.* Maryland, 187 U. S. 267.
Great Nor. R. Co. *v.* Minnesota, 216 U. S. 206.
Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.
Tampa Water Works Co. *v.* Tampa, 199 U. S. 241.
Miller *v.* New York, 15 Wall. 478.
Bienville Water Supply Co. *v.* Mobile, 186 U. S. 220.

(*b*) *By a general statute.*—The existence of a general statute reserving to the legislature the right to alter and amend the charter of a corporation, unlike a similar provision in a State constitution, does not prevent a State from making an irrepealable contract with a corporation.

New Jersey *v.* Yard, 95 U. S. 111.
Covington *v.* Kentucky, 173 U. S. 239.
Home of the Friendless *v.* Rouse, 8 Wall. 438.
Freeport Water Co. *v.* Freeport, 180 U. S. 587.
Hoge *v.* Richmond, etc., R. Co., 99 U. S. 352.
Holyoke Water-Power Co. *v.* Lyman, 15 Wall. 500.
Louisville Gas Co. *v.* Citizens', etc., Co., 115 U. S. 696.

Where a general statute was in force making all corporate charters subject to amendment or repeal, an exemption of the

property of a corporation from taxation may be repealed unless it appears that there was an express obligation on the part of the State amounting to a contract of immunity from taxation.

Seton Hall College *v.* South Orange, 242 U. S. 100.
Trask *v.* Maguire, 18 Wall. 402.
Tomlinson *v.* Jessup, 15 Wall. 456.

(*c*) *By a charter provision.*—Where a provision is incorporated in the charter of the corporation making the duration of the charter conditional, or reserving to the State the power to alter, modify, or repeal the same at pleasure, it qualifies the grant, and the subsequent exercise of that reserved power can not be regarded as an act within the prohibition of the Constitution.

Pennsylvania College Cases, 13 Wall. 213.
Hamilton Gaslight Co. *v.* Hamilton, 146 U. S. 270.

(*d*) *By a municipal ordinance.*—An ordinance granting a street railway company the right for fifty years to charge a rate of five cents vests, when subsequently ratified by statute, a contract provilege which can not be impaired by action of the city during the term, notwithstanding the want of power in the city to make it at the time it was entered into.

Minneapolis *v.* Street Railway Co., 215 U. S. 417.
Puget Sound Traction, etc., Co. *v.* Reynolds, 244 U. S. 574.

As affecting holders of securities.—Where a charter provides that "the legislature may at any time hereafter amend or repeal this act," the fact that there is outstanding an issue of bonds and a mortgage on the property of the corporation does not limit the power of the legislature to repeal the act.

Calder *v.* Michigan, 218 U. S. 591.
Fair Haven, etc., R. Co. *v.* New Haven, 203 U. S. 379.
Shields *v.* Ohio, 95 U. S. 324.

Subject to constitutional rights.—The right to amend a charter does not authorize the taking of the company's property without just compensation or due process of law.

Chicago, etc., R. Co. *v.* Wisconsin, 238 U. S. 491.
Berea College *v.* Kentucky, 211 U. S. 45.
Stearns *v.* Minnesota, 179 U. S. 223.

Construction of powers granted.—Any privileges which may exempt a corporation from the burdens common to individuals do not flow necessarily from the charter, but must be expressed in it or they do not exist, and while it is true that in construing a charter the court must carry out the intention of the legislature and sustain the charter where there is no ambiguity in the language used, yet where there is any uncertainty as to the legislative intention the doubt is to be resolved in favor of the State. This is especially true where the right claimed under the charter tends to impair the State's power to exercise its ordinary governmental functions. The relinquishment of any sover-

eign power must be plain and unequivocal; it is never to be presumed.

Providence Bank *v.* Billings, 4 Pet. 562.
Washington University *v.* Rouse, 8 Wall. 440.
The Binghamton Bridge, 3 Wall. 75.
Charles River Brdg. *v.* Warren Brdg., 11 Pet. 544.
See also—
James *v.* Milwaukee, 16 Wall. 161.
New Orleans *v.* Houston, 119 U. S. 278.
Ruggles *v.* Illinois, 108 U. S. 531.
Stein *v.* Bienville, etc., Co., 141 U. S. 81.
Coosaw Min. Co. *v.* South Carolina, 144 U. S. 562.
Louisville, etc., R. Co. *v.* Kentucky, 161 U. S. 685.
Covington, etc., Turnpike Co. *v.* Sandford, 164 U. S. 588.
Ohio Life Ins. Co. *v.* Debolt, 16 How. 435.
Curtis *v.* County of Butler, 24 How. 448.
New Orleans *v.* Texas, etc., R. Co., 171 U. S. 343.
Minneapolis, etc., R. Co. *v.* Gardner, 177 U. S. 332.

The State grant of a charter is a contract, but all contracts are made subject to the right of eminent domain, and the exercise of the power of eminent domain is not a revocation of the grant contained in a charter. The taking of property acquired under a charter contract does not impair the obligation of the contract; it merely appropriates the property as any other property to public use.

West River Brdg. Co. *v.* Dix, 6 How. 507.
Illinois and Mich. Canal *v.* Michigan Cent. R. Co., 14 Ill. 314.
Green *v.* Biddle, 8 Wheat. 89.
See also—
Richmond R. Co. *v.* Louisa R. Co., 13 How. 71.
Rundle *v.* Delaware, etc., Co., 14 How. 80.
Long Island Water, etc., Co. *v.* Brooklyn, 166 U. S. 69.
Garrison *v.* New York City, 21 Wall. 196.
Munn *v.* Illinois, 94 U. S. 113.
Beer Co. *v.* Massachusetts, 97 U. S. 32.

The rules of construction which have been adopted by courts in cases of public grants of this nature by the authorities of cities are of long standing. It has been held that such grants should be in plain language, that they should be certain and definite in their nature, and should contain no ambiguity in their terms. The legislative mind must be distinctly impressed with the unequivocal form of expression contained in the grant in order that the privileges may be intelligently granted or purposely withheld. As was said in Cleveland, etc., R. Co. *v.* Cleveland (204 U. S. 129)—

> It is a matter of common knowledge that grants of this character are usually prepared by those interested in them, and submitted to the legislatures with a view to obtain from such bodies the most liberal grant of privileges which they are willing to give. This is one among many reasons why they are to be strictly construed.

See also—
Detroit, etc., R. Co. *v.* Detroit, 229 U. S. 44.

In the interpretation of legislative contracts the rule should be followed that all contracts are to be construed to accomplish the intention of the parties, and in determining their different provisions a liberal and fair construction will be given to the words, either singly or in connection with the subject matter. It is not the duty of the court by legal subtlety to overthrow a contract, but rather to uphold it and give it effect; and no strained or artificial rule of construction is to be applied to any part of it.

The Binghamton Bridge, 3 Wall. 74.
See also—
Holyoke Company *v.* Lyman, 15 Wall. 511.
Charles River Brdg. *v.* Warren Brdg., 11 Pet. 548.
Ford *v.* Delta, etc., Land Co., 164 U. S. 666.
Yazoo, etc., R. Co. *v.* Thomas, 132 U. S. 185.
Memphis, etc., R. Co. *v.* Arkansas, 112 U. S. 617.
Railway Co. *v.* Philadelphia, 101 U. S. 532.
Great Nor. R. Co. *v.* Minnesota, 216 U. S. 206.
Stanislaus County *v.* San Joaquin, etc., Co., 192 U. S. 208.
Georgia, etc., R. Co. *v.* Smith, 128 U. S. 177.
Metropolitan, etc., R. Co. *v.* State Board, 199 U. S. 1.
Pearsall *v.* Great Nor. R. Co., 161 U. S. 664.
Ruggles *v.* Illinois, 108 U. S. 531.
Railroad Co. *v.* Commissioners, 103 U. S. 3.
Railway Co. *v.* Loftin, 98 U. S. 564.
Railroad Companies *v.* Gaines, 97 U. S. 708.
North Missouri R. Co. *v.* Maguire, 20 Wall. 61.
Delaware Railroad Tax, 18 Wall. 225.
Tennessee *v.* Whitworth, 117 U. S. 149.
Louisiana R., etc., Co. *v.* Behrman, 235 U. S. 164.
Perry Co. *v.* Norfolk, 220 U. S. 472.
St. Louis *v.* United Rys. Co., 210 U. S. 266.
Rogers Park Water Co. *v.* Fergus, 180 U. S. 624.
Freeport Water Co. *v.* Freeport, 180 U. S. 587.
Louisville *v.* Louisville Bank, 174 U. S. 444.
Chicago, etc., R. Co. *v.* Guffey, 120 U. S. 574.
Wiggins Ferry Co. *v.* East St. Louis, 107 U. S. 371.
Richmond, etc., R. Co. *v.* Louisa R. Co., 13 How. 81.

In Knoxville Water Co. *v.* Knoxville (200 U. S. 37), it was said:

It is, we think, important that the courts should adhere firmly to the salutary doctrine underlying the whole law of municipal corporations and the doctrines of the adjudged cases, that grants of special privileges affecting the general interests are to be liberally construed in favor of the public, and that no public body, charged with public duties, be held upon mere implication or presumption to have divested itself of its powers.

Fixing of rates of public service corporations.—On this subject the court said in Milwaukee Elec., etc., Co. *v.* Wisconsin (238 U. S. 180):

The fixing of rates which may be charged by public service corporations of the character here involved is a legislative function of the State, and while the right to make contracts which shall prevent the State during a given period from exercising this important power has been recognized and approved by judicial decisions, it has been uniformly held in this

court that the renunciation of a sovereign right of this character must be evidenced by terms so clear and unequivocal as to permit of no doubt as to their proper construction.

A grant, in general terms, of authority to fix rates is not a renunciation of legislative control, but evinces merely a purpose to confer power to exact compensation which shall be just and reasonable. It is only when there is an unmistakable manifestation of a purpose to place the unrestricted right in the corporation to determine rates of compensation that the power of the legislature afterwards to interfere can be denied.

Railroad Commission Cases, 116 U. S. 330.[1]

The right granted by a constitution to lay pipes in streets so far as may be necessary for introducing into and supplying such city with gas or water, when accepted and acted upon by a corporation organized for that purpose, can not be subsequently impaired so as to limit the privilege to maintain pipes then actually laid, but is a right to lay pipes to carry gas and water to the inhabitants in any part of the municipality.

Russell *v.* Sebastian, 233 U. S. 195.

Where a franchise or privilege has been abused or misemployed, its revocation does not impair the obligation of the contract.

Columbus *v.* Mercantile Trust Co., 218 U. S. 645.
New Orleans Waterworks Co. *v.* Louisiana, 185 U. S. 336.
Farmers' Loan, etc., Co. *v.* Galesburg, 133 U. S. 156.
Chicago Life Ins. Co. *v.* Needles, 113 U. S. 574.
Cosmopolitan Club *v.* Virginia, 208 U. S. 378.

Where a franchise has not been exercised within a reasonable time in accordance with the condition which inheres in the nature of the grant, its revocation upon this ground can not be regarded as an impairment of contractual obligation.

New York Elec. Lines *v.* Empire City Subway Co., 235 U. S. 179.

When the franchise of a street railway company has expired, an ordinance prescribing certain conditions upon which it may have the privilege of continuing to occupy the streets or requiring it to cease operating its cars and to remove its tracks from the streets does not impair the obligation of any contract.

Detroit United R. Co. *v.* Detroit, 229 U. S. 39; 255 U. S. 171.

The obligation of the contracts of bondholders of private corporations is within the protection of this clause.

State Tax on Foreign-Held Bonds, 15 Wall. 317.

As to changing contract without consent of bondholder, see—

Gilfillan *v.* Union Canal Co., 109 U. S. 404.

Liability of stockholders.—When a State statute, at the time a corporation becomes indebted, prescribes the liability of each stockholder to depositors and creditors, the liability assumed by a stockholder is in the nature of a contract with prospective

[1] See also "Powers Remaining in the States," under Commerce Clause, p. 145.

creditors, and can not, as such, be impaired in any essential particular by State legislation. It runs directly from the stockholder to the creditor, and the obligation becomes a part of every contract, debt, and engagement of the corporation as much as if severally made with the stockholder himself.

Knickerbocker Trust Co. *v.* Myers, 133 Fed. 766.
See also—
Sherman *v.* Smith, 1 Black 590.
Ochiltree *v.* Iowa R., etc., Co., 21 Wall. 251.
Pinney *v.* Nelson, 183 U. S. 144.
Hill *v.* Merchants' Mut. Ins. Co., 134 U. S. 515.
Pittsburgh Steel Co. *v.* Baltimore, etc., Soc., 226 U. S. 455.

A statute repealing the charter provision as to the liability of the stockholders impairs the obligation of contracts as respects creditors of the corporation existing at the time of the repeal; the obligation is impaired whether considered as an agreement by the stockholder on subscribing for stock to become security for the creditors for the payment of the debts of the company which had been contracted upon the faith of his liability, or as abolishing the remedy which the corporation had, and as impairing the obligation of the contract of the corporation.

Hawthorne *v.* Calef, 2 Wall. 10.
See also—
Bernheimer *v.* Converse, 206 U. S. 516;
Selig *v.* Hamilton, 234 U. S. 652; and
Henley *v.* Myers, 215 U. S. 373, as to change of remedy.

No injustice shall be done to stockholders.—When a constitutional provision authorizing the amendment or repeal of a charter contains a condition: "*Provided, however*, That no injustice shall be done to the stockholders," a contract with a waterworks company excluding competition by the city in furnishing a water supply for a stated period can not be impaired by the establishment of a municipal plant, as it would be a palpable injustice to the stockholders to permit the competition.

Vicksburg *v.* Vicksburg Waterworks Co., 202 U. S. 453.

Contracts of Railroad Corporation[1]

In general.—A charter granted to a railroad corporation is a contract, and a franchise granted to one railroad can not be revoked or granted to another. A franchise to operate a street railroad, if valid when granted, can not be impaired either by legislative act or judicial decision. An ordinance which merely amounts to a proposition to grant a franchise in consideration of the construction and operation of a street railroad, when accepted by performance, becomes a contract unimpairable by the State.

Wilmington R. R. *v.* Reid, 13 Wall. 266.
New Orleans, etc., R. Co. *v.* Delamore, 114 U. S. 510.
Chicago *v.* Sheldon, 9 Wall. 55.
City R. Co. *v.* Citizens R. Co., 166 U. S. 567.

[1] See Art. I, sec. 8, cl. 3, p. 83, as to regulations of commerce by Congress.

See also—
Pacific R. Co. *v.* Maguire, 20 Wall. 43.
Chicago, etc., R. Co. *v.* Iowa, 94 U. S. 161.
New York, etc., R. Co. *v.* Pennsylvania, 153 U. S. 628.
Pearsall *v.* Great Northern R. Co., 161 U. S. 661.
Houston, etc., R. Co. *v.* Texas, 170 U. S. 261.
Blair *v.* Chicago, 201 U. S. 400.
Grand Trunk, etc., R. Co. *v.* South Bend, 227 U. S. 544.

Statute providing for the operation of a street railway company by trustees does not impair the obligation of any contract.

Boston *v.* Jackson, 260 U. S. 309.

Upon the consolidation of two or more railroad corporations, the franchise granted to the consolidated corporation is subject to the laws in force at the time of the consolidation; the consolidation works their individual dissolution.

Railroad Co. *v.* Maine, 96 U. S. 510.
Shields *v.* Ohio, 95 U. S. 323.
See also—
Pullman Co. *v.* Missouri, etc., R. Co., 115 U. S. 594.
Chesapeake, etc., R. Co. *v.* Miller, 114 U. S. 188.
Wabash, etc., R. Co. *v.* Ham, 114 U. S. 595.
Keokuk, etc., R. Co. *v.* Missouri, 152 U. S. 310.

Exclusive privileges.—As to the strict construction of the language of a charter granting exclusive privileges in the case of a railroad between Washington, D. C., and Richmond, Va., see—

Richmond, etc., R. Co. *v.* Louisa R. Co., 13 How. 80.

When, by a State statute, a railway company has become vested with exclusive rights to operate a street railway in a city, the municipal corporation can not by ordinance grant to another company the privilege of laying and operating a railway upon the same streets before the expiration of the charter granted to the first company.

City R. Co. *v.* Citizens' St. R. Co., 166 U. S. 557.

The grant by a county board of a right to locate, construct, maintain, and operate an interurban electric railway along a State highway, without specifying any limit of time, must be held—unless there are controlling provisions in the State constitution or statutes, or a prior adjudication by its courts to the contrary—to constitute, when accepted, a perpetual franchise, protected by this clause, against revocation by subsequent resolution of such board.

Northern Ohio Traction, etc., Co. *v.* Ohio, 245 U. S. 574.
See also—
United R. Rs., etc., *v.* San Francisco, 249 U. S. 517.

Subject to operation of general laws.—The power given to the directors of a railroad company in the charter to make by-laws, rules, and regulations for the management of the affairs of the company, with the express provision that such by-laws, rules, and regulations shall not be contrary to the laws of the State, does not imply a contract on the part of the State to exempt the company from the operation of laws enacted within the scope

of legislative power for the regulation of business in which it has authority to engage.

Railroad Commission Cases, 116 U. S. 329.
Pennsylvania R. Co. *v.* Miller, 132 U. S. 82.

Liability for tort of lessee railroad.—A railroad company which has leased its road under an amendment to its charter which contains no other provision as to leasing than that the leasing may be upon such terms as are mutually agreeable to the parties has no contract the obligation of which is impaired by applying to it a general statute which renders any railroad company of that State leasing its road to a company of another State liable jointly with the lessee for any actionable tort of the latter committed in the operation of the road.

Chicago, etc., R. Co. *v.* McWhirt, 243 U. S. 422.

Municipal control—*In general.*—Even in the absence of positive legislation giving a municipal corporation the power to regulate the use of the streets by railroad companies, any contract entered into by the city with a railroad company would be subject to the exercise of such a power by the city, so long as it did not materially modify or impair the rights granted by the contract.

Baltimore *v.* Baltimore Trust Co., 166 U. S. 681.
Denver, etc., R. Co. *v.* Denver, 250 U. S. 241.

Right to lay double track.—Where under statutory authority a municipal corporation has granted to a railway company the right to lay double tracks on certain streets, such is a contract right which can not be impaired by a subsequent ordinance, passed after one track has been laid and in use, prohibiting the laying of a second track, when the statute, while it authorized the city to grant the franchise, reserved to it no such power to repeal.

Grand Trunk, etc., R. Co. *v.* South Bend, 227 U. S. 544.
See also—
Baltimore *v.* Baltimore Trust, etc., Co., *supra*, holding that though a city has made a grant to a railroad company to lay double tracks through many miles of streets, it may, in the exercise of the police power, subsequently repeal the grant as far as it relates to a short distance in a crowded part of a narrow street.
Louisiana *v.* Morgans Co., 264 U. S. 392, as to construction of viaduct.

License not contract.—A license to use a sidewalk as a spur track, granted by a city to a railroad long after the creation of the railroad corporation, is not a contract right protected by the Constitution, and the city may direct its removal by legislation.

Seaboard Air Line R. Co. *v.* Raleigh, 242 U. S. 15.
See also—
Southern Pac. Co. *v.* Portland, 227 U. S. 559, as to prohibiting the running of locomotives along a street.
Wabash R. Co. *v.* Defiance, 167 U. S. 93, as to the erection and maintenance of bridges.
Chicago, etc., R. Co. *v.* Nebraska, 170 U. S. 71, as to construction of viaduct over tracks.

Atlantic Coast Line *v.* Goldsboro, 232 U. S. 548, as to conforming to grade and shifting of cars.
Richmond, etc., R. Co. *v.* Richmond, 96 U. S. 537, as to use of steam in propelling cars.
Worcester *v.* Worcester, etc., R. Co., 196 U. S. 548;
Oklahoma R. Co. *v.* Severns Pav. Co., 251 U. S. 104;
Pacific Gas Co. *v.* Police Ct., 251 U. S. 22, and
Denver, etc., R. Co. *v.* Denver, 250 U. S. 241, as to general regulations affecting railroad track laid in public street.
East Tennessee, etc., R. Co. *v.* Frazier, 139 U. S. 288, as to power to create a mortgage.
Baltimore, etc., R. Co. *v.* Nesbit, 10 How. 395, and
Minneapolis, etc., R. Co. *v.* Emmons, 149 U. S. 364, as to right to hold and method of acquiring land.
Offield *v.* New York, etc., R. Co., 203 U. S. 372, as to condemnation of stock owned by a person who refuses to agree on the terms of purchase.
Southern Wisconsin R. Co. *v.* Madison, 240 U. S. 457, and
New Orleans, etc., R. Co. *v.* Louisiana, 157 U. S. 219, as to paving and repairing streets.

Power to require abolition of railroad grade crossings regarded as authority impliedly reserved when State granted right to occupy land.

Erie R. Co. *v.* New Jersey, 254 U. S. 394.

Regulation of rates.[1]—*In general.*—A State may regulate the rates to be charged by a railroad for the transportation of freight and passengers, unless restrained by some positive provision in the charter; and its power in this regard is not affected by the fact that the corporation's income has been pledged to meet obligations incurred on the faith of the charter. It is competent for the State to empower a corporation absolutely to fix its own rates, and where this is done expressly any attempt to change the rates by the State impairs a contract obligation.

Chicago, etc., R. Co. *v.* Iowa, 94 U. S. 155.
Winona, etc., R. Co. *v.* Blake, 94 U. S. 180.
Ruggles *v.* Illinois, 108 U. S. 526.
Ex parte Koehler, 23 Fed. 529.
See also—
Peik *v.* Chicago, etc., R. Co., 94 U. S. 164.
San Antonio Traction Co. *v.* Altgelt, 200 U. S. 304.
Central Trust Co. *v.* Citizens' St. R. Co. 82 Fed. 1.
Terre Haute, etc., R. Co. *v.* Indiana, 194 U. S. 579.

A carrier can not assert, as against the operation of a rate-making order of the State railroad commission, the constitutional protection of a contract right under its charter to charge certain rates where its charter became, by the carrier's own voluntary act, subject to legislative alteration, since the commission's order fixing rates is a legislative act under delegated power.

Louisville, etc., R. Co. *v.* Garrett, 231 U. S. 298.

An ordinance granting a right to charge 5 cents fare for one continuous ride on a street railway, passed after the adoption

[1] See Art. I, sec. 8, cl. 3, p. 83, as to regulation by Congress.

of a constitutional provision declaring that "no irrevocable or uncontrollable grant of special privileges" shall be made, does not constitute a contract with respect to which no further legislation upon that subject can be enacted without impairing its obligation, and a statute requiring the company to sell tickets to school children for half the regular fare is valid.

San Antonio Traction Co. *v.* Altgelt, 200 U. S. 304.

As to acceptance by corporation of subsequent constitutional provision see—

Louisville, etc., R. Co. *v.* Garrett, 231 U. S. 298.

Order of Public Service Commission of Washington requiring street railway passengers to be carried beyond limits of particular franchise held not to impair obligation of contract contained in municipal ordinance granting street railway franchise.

Puget Sound Traction, etc., Co. *v.* Reynolds, 244 U. S. 574.

Railroad can not repudiate rates contracted for.—A railroad corporation may contract with a municipality or with a State to operate a railway at agreed rates of fare. And where the provisions of an accepted statute respecting rates to be charged for transportation are plain and unambiguous, and do not contravene public policy or positive rules of law, a railroad company can not avail itself of privileges which have been procured upon stipulated conditions and repudiate performance of the latter at will.

Grand Rapids, etc., Co. *v.* Osborn, 193 U. S. 29.

A decision of a State supreme court denying an interstate carrier an immunity based upon a stipulation on an interstate passenger ticket held reviewable by certiorari and not by writ of error. A ticket for interstate passage over several railroads bore a printed stipulation limiting the selling carrier's liability to its own lines. Held, that by accepting and using the ticket, though without reading it, a passenger must be presumed to have agreed to the stipulation, thereby establishing a contract, *prima facie* valid, and binding in a State court.

Missouri Pac. R. R. *v.* Prude, 265 U. S. 99.

Construction of language granting right.—In providing for a rate of fare to be charged by a street railway company, it may very well be that language used by a legislature in merely conferring authority upon a company to fix certain charges for fare might not be regarded as amounting to a contract, when the same language used by parties in fixing rates under a legislative authority and direction to agree upon them would be regarded as forming a contract, because the statute provided specially for that mode of determining them.

Detroit *v.* Detroit, etc., R. Co., 184 U. S. 388.

Where a street railway has by ordinance a contract right to charge 5 cents for one continuous fare, the acceptance of a subsequent ordinance giving the city the right to control the "construction, maintenance, and operation" of its lines, does not abrogate the contract right as to the fare.

Minneapolis *v.* Minneapolis St. R. Co., 215 U. S. 417.

The right given a railroad by the law under which it is incorporated to have its passenger rates, within certain limits, unaffected by future legislation, does not inure to the benefit of the purchaser of its property, in the absence of express direction to that effect in the law.

St. Louis, etc., R. Co. *v.* Gill, 156 U. S. 649.

When subject to legislative or municipal control.—A State has power to limit the amount of charges which railroad companies receive for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter. The court said:

This power of regulation is a power of government, continuing in its nature, and if it be bargained away at all it can only be by words of positive grant, or something which is in law equivalent. If there is reasonable doubt, it must be resolved in favor of the existence of the power.

Railroad Commission Cases, 116 U. S. 325.

See also—

Southern Pac. Co. *v.* Campbell, 230 U. S. 537.
Chicago, etc., R. Co. *v.* Iowa, 94 U. S. 161.
Louisville, etc., R. Co. *v.* Kentucky, 183 U. S. 517.
Chicago, etc., R. Co. *v.* Minnesota, 134 U. S. 455.
Detroit United R. Co. *v.* Detroit, 248 U. S. 429.
St. Paul, etc., Co. *v.* Northern Pac. Ry. Co., 296 Fed. 749.

When not subject to legislative or municipal control.—An ordinance constituting a binding contract in respect to the rates of fare to be thereafter exacted upon the consolidated and extended lines of street railway companies can not be impaired by subsequent ordinances reducing those rates.

Cleveland *v.* Cleveland City R. Co., 194 U. S. 536.

When a rate of fare that may be charged by a street railway company is fixed by positive agreement under expressed legislative authority, the subject is not open to alteration thereafter by the common council alone, under the right to prescribe from time to time the rules and regulations for the running and operation of the road.

Detroit *v.* Detroit, etc., R. Co., 184 U. S. 389.
Detroit United Ry. *v.* Michigan, 242 U. S. 238.

Municipal aid to construction of railroad.[1]—An agreement between a county and a railroad company by which the company voted in favor of a proposition to donate a certain sum to the

[1] See "Contracts of States—legislative grants," p. 330, and "Police Powers," p. 309.

company, provided the railroad should be located on a certain line as specifically prescribed, and provided the bonds issued in payment of such donation should not be payable until the railroad had been completed, is such a contract as can not be impaired by a constitutional provision declaring that no municipal corporation shall ever make a donation to any railroad or private corporation adopted after the contract had been partly performed by the railroad.

County of Clay *v.* Savings Soc., 104 U. S. 590.
See also—
Railroad Co. *v.* Falconer, 103 U. S. 824.
Aspinwall *v.* Daviess County, 22 How. 364.
Pearsall *v.* Great Northern R. Co., 161 U. S. 666.
Norton *v.* Brownsville, 129 U. S. 490.
Wadsworth *v.* Supervisors, 102 U. S. 536.
Concord *v.* Portsmouth Sav. Bank, 92 U. S. 625.

Contracts of Waterworks Companies

Grant of franchise.—The grant of a right to supply gas or water to a municipality and its inhabitants, through pipes and mains laid in the streets, upon condition of the performance of its service by the grantee, is the grant of a franchise vested in the State, in consideration of the performance of a public service, and after performance by the grantee is a contract protected by the Constitution against State legislation to impair it, and it is equally clear that such franchises may be bestowed upon corporations by the municipal authorities, provided the right to do so is given by their charters.

Walla Walla *v.* Walla Walla Water Co., 172 U. S. 9.
Skaneateles Waterworks Co. *v.* Skaneateles, 184 U. S. 363.
Superior Water Co. *v.* Superior, 263 U. S. 125.

Grant of exclusive privilege.—The grant of a franchise to a waterworks company is for a public purpose, and the grant could be accompanied by such exclusive privileges to the grantee as in the judgment of the State were proper. Such a grant is a contract the obligation of which can not be impaired by subsequent legislation or by a change in the organic law of the State.

New Orleans Waterworks Co. *v.* Rivers, 115 U. S. 680.
See also—
St. Tammany Waterworks *v.* New Orleans Waterworks, 120 U. S. 64.
Stein *v.* Bienville, etc., Co. 141 U. S. 68.
Ramapo Water Co. *v.* New York, 236 U. S. 579.
Helena Waterworks Co. *v.* Helena, 195 U. S. 388.
Boise Water Co. *v.* Boise City, 230 U. S. 84.
St. Anthony Falls, etc., Co. *v.* St. Paul, 168 U. S. 349.
Denver *v.* New York Trust Co., 229 U. S. 123.
Mercantile Trust, etc., Co. *v.* Columbus, 203 U. S. 311.
Vicksburg Waterworks Co. *v.* Vicksburg, 185 U. S. 65.
Vicksburg *v.* Vicksburg Waterworks Co., 202 U. S. 453; 206 U. S. 496.
Madera Waterworks *v.* Madera, 228 U. S. 454.
Knoxville Water Co. *v.* Knoxville, 200 U. S. 22.
Newburyport Water Co. *v.* Newburyport, 193 U. S. 577.

Regulation of water rates.—It is within the power of the Government to regulate the prices at which water shall be sold by one who enjoys a virtual monopoly of the sale.

Spring Valley Waterworks *v.* Schottler, 110 U. S. 354.
See also—
Owensboro *v.* Owensboro Waterworks Co., 191 U. S. 358.
Freeport Water Co. *v.* Freeport, 180 U. S. 587.
Knoxville Water Co. *v.* Knoxville, 189 U. S. 434.
Stanislaus County *v.* San Joaquin, etc., Co., 192 U. S. 208.
Los Angeles *v.* Los Angeles Water Co., 177 U. S. 558.
Tampa Waterworks Co. *v.* Tampa, 199 U. S. 241.
Osborne *v.* San Diego Land, etc., Co., 178 U. S. 22.
Rogers Park Water Co. *v.* Fergus, 180 U. S. 624.
Vicksburg *v.* Vicksburg Waterworks Co., 206 U. S. 496.

Riparian rights.—Riparian lands or rights acquired by power company held to be property acquired under its charter and not contract rights expressed or implied in the grant of the charter.

Sears *v.* Akron, 246 U. S. 242.
See also—
Hudson County Water Co. *v.* McCarter, 209 U. S. 349, as to diversion of water by riparian owner.

Contracts Between Corporations and Individuals

In general.—Contracts between a corporation and individuals do not affect the right of the State to modify the corporate charter pursuant to a reserve power.

Pennsylvania College Cases, 13 Wall. 190.

A statute authorizing the transfer of corporate franchises to a new corporation held not to impair the obligation of the contract of the old corporation with its creditors.

Smith *v.* Chesapeake Canal Co., 14 Pet. 45.
Gilfillan *v.* Union Canal Co., 109 U. S. 401.

When corporations created for a public purpose, such as railroad companies, enter into contracts affecting the safety and welfare of the public, the presumption is that they do so with the knowledge that their agreements can not withdraw such subjects from the police power of the State; and hence such contracts are not necessarily protected by the Federal Constitution from subsequent State legislation modifying or annulling their provision.

Chicago, etc., R. Co. *v.* Nebraska, 170 U. S. 57.
Offield *v.* New York, etc., R. Co., 203 U. S. 372.

The common-enemy doctrine as to surface water was not so imported into railroad's irrepealable charter or its contracts with landowners from whom its right of way was acquired as to be protected by the contracts clause.

Chicago, etc., R. Co. *v.* Tranbarger, 238 U. S. 67.

A contract between two intersecting railway companies, imposing upon the junior road the duty of constructing and properly maintaining the physical crossings of the two roads, and

providing and maintaining semaphores or other signals, is not unconstitutionally impaired by a subsequent order of the State railroad commission, directing the installation and use of an interlocking plant at such crossing, and apportioning between the two companies the expense of executing the order.

Grand Trunk, etc., R. Co. *v.* Indiana, 221 U. S. 400.

Legislative authority to change the plan of the business done by a life insurance company from the assessment plan to the legal reserve, flat premium plan of "old line" insurance does not work a violation of the contract with those certificate holders who failed to change to the new plan, although their assessments may have increased because of the lesser number subject to the assessment, and the death of members, where the right of amendment was expressly reserved in the articles of association.

Wright v. Minnesota Ins. Co., 193 U. S. 657.

Missouri statute declaring that in all suits upon policies of life insurance it shall be no defense that the insured committed suicide, applies not only to cases where the insured takes his own life voluntarily and in full possession of his mental faculties, but to all cases of self-destruction by the insured, whether sane or insane, unless he contemplated suicide at the time he made his application for the policy.

Knights Templars, etc., Co. *v.* Jarman, 187 U. S. 197.

The removal by the South Carolina Dispensary Commission (under act S. C. Feb. 23, 1910) of funds in the hands of county dispensaries due to a corporation indebted to the State does not impair contract obligations though the State has not consented to be sued.

Carolina Glass Co. *v.* South Carolina, 240 U. S. 305.

If a statute requiring the managers of insolvent banks to hold their assets for the payment of certain specified debts has the effect to appropriate the assets of the bank to pay the debts of the State to the prejudice of bill holders and other creditors of the bank, it is invalid as impairing contracts.

Barings *v.* Dabney, 19 Wall. 1.

In Canada, where no constitutional provision exists against the passage of laws impairing the obligation of contracts, Parliament may by statute compel individual bondholders of a domestic corporation to accept an arrangement or compromise made when the corporation is in financial embarrassment for the benefit of all the bondholders and accepted by a majority of them.

Canada Sou. R. Co. *v.* Gebhard, 109 U. S. 527.

Statute repealing charter or authorizing the dissolution of a corporation did not impair its contracts with its creditors because they must have contracted with reference to such a possibility.

Mumma *v.* Potomac Co., 8 Pet. 281.

Right of State to enforce legitimate public policy includes right to change regulations for that purpose, even to making of changes in conflict with contracts made by individuals in reliance on previous regulations.

Thornton v. Duffy, 254 U. S. 361.

The liability of a stockholder of a corporation to a creditor is one founded on contract which the legislature has no right to impair by subsequent legislation.

Hawthorne *v.* Calef, 2 Wall, 10.
Ochiltree *v.* Railroad Co., 21 Wall. 249.

The remedies which creditors of corporations have against the individual stockholders for the corporate debts exists by statute only and the legislature may change or restrict it upon preexisting as well as upon subsequent contracts.

Fourth Nat. Bank *v.* Francklyn, 120 U. S. 747.

The change in the remedy afforded to a creditor of a corporation where stockholders have not fully paid their subscriptions for stock, or are liable for double the amount of their stock, by substituting for the existing right of any creditor to recover in an action at law against any such stockholder an exclusive remedy by bill in equity on behalf of all the creditors who may come in against the resident shareholders, which abates all pending actions, saving to the creditor in such actions the right to become a party to the bill, does not impair any contract between creditor and shareholder.

Henley v. Myers, 215 U. S 373.
Pittsburgh Steel Co. *v.* Baltimore, etc., Soc., 226 U. S. 455.
Contra—
Myers v. Knickerbocker Trust Co., 139 Fed. 111.
Harrison *v.* Remington Paper Co., 140 Fed. 385.
Western Nat. Bank *v.* Reckless, 96 Fed. 70.
Evans *v.* Nellis, 101 Fed. 920.
Webster *v.* Bowers, 104 Fed. 627.
Knickerbocker Trust Co. *v.* Myers, 133 Fed. 764.
Knickerbocker Trust Co. *v.* Cremen, 140 Fed. 973.

Alien Property Custodian.—Preventing enforcement of claim against funds in hands of Alien Property Custodian does not impair contract.

Nortz *v.* Miller, 285 Fed. 778.

Rent regulation.—New York housing acts, requiring reasonable rents and denying recovery of possession except in certain cases, as applied to tenants holding over under expired lease, sustained, though lease executed before and expired after enactment, and landlord before enactment had entered into new lease with third party.

Marcus Brown Co. *v.* Feldman, 256 U. S. 170.
Block *v.* Hirsh, 256 U. S. 135.

Miscellaneous

Contracts of lighting companies—*In general.*—A franchise granting a private corporation the right for a limited period to operate a light, water, or gas system is not a contract the obligation of which is impaired by the city afterwards establishing a competing system.

Joplin *v.* Light Co., 191 U. S. 150.

See also—

Capital City Light, etc., Co. *v.* Tallahassee, 186 U. S. 401, as to right of city to erect plant before exercise of exclusive privilege by light company.

A charter giving a gaslight company the exclusive privilege of supplying a certain city with gas creates a contract that can not be impaired.

New Orleans Gaslight Co. *v.* Louisiana Light Co., 115 U. S. 650.

Louisville Gas Co. *v.* Citizens' Gaslight Co., 115 U. S. 683.

The exclusive right to light a city with gas for 30 years is not legally impaired by a subsequent contract with another company to light the streets with electricity.

Saginaw Gaslight Co. *v.* Saginaw, 28 Fed. 529.

The power of a State to abrogate private contracts touching the rates of public utilities exists only as an incident to the regulation of such utilities and their rates in the public interest.

Arkansas Gas Co. *v.* Railroad Comm., 261 U. S. 379.

Regulation of poles and wires by municipality.—The obligation of a municipal electric light and power franchise covering public and private uses, granted when the applicable statute then in force gave the municipality a qualified control over the erection of electric light and power appliances in the streets, was not impaired by subsequent legislation giving the municipality exclusive control, under which the light and power company, having removed and dismantled its street lighting system upon the expiration of a street lighting contract, may be restrained from erecting any poles or wires in the street until the consent of the municipality shall have been obtained, without prejudice to the company's right to maintain, repair, or replace such poles and wires as it is then using for commercial lighting.

Hardin-Wyandot Lighting Co. *v.* Upper Sandusky, 251 U. S. 173.

Regulation of lighting rates.—The power of a municipality to contract away its right to fix reasonable gas rates must be conferred by express legislative grant and is not possessed by doubtful construction of statutes.

Wyandotte County Gas Co. *v.* Kansas, 231 U. S. 622.

Where a lighting company enters into a contract with a private corporation to supply it with power and light at a certain rate for a definite time, the lighting company may, notwithstanding such contract, increase the rate before its expiration if authorized by an order of a public service commission having power from the legislature to regulate rates.

Union Dry Goods Co. *v.* Georgia, 248 U. S. 372.

Cedar Rapids Gas Light Co. *v.* Cedar Rapids, 233 U. S. 655, as to effect of discount clause in franchise.

A contract exemption from State regulation of the price of gas contained in the charter of a gas company does not extend to the plants of and territory occupied by other gas companies not possessing such exemption, which are absorbed by the former company.

People's Gaslight, etc., Co. *v.* Chicago, 194 U. S. 1.

Constitutional rights not infringed by ordinance fixing gas rates which distributing company may charge.

Newark Natural Gas, etc., Co. *v.* Newark, 242 U. S. 405.

Contracts of telegraph and telephone companies—*Regulation of rates.*—As applicable to a telephone company, the rule has been stated that the State may authorize one of its municipal corporations to establish by an inviolable contract the rates to be charged by a public-service corporation for a definite term, and that the effect of such a contract is to suspend, during the life of the contract, the governmental power of fixing and regulating the rates. Clear authority from the legislature is needed to enable the city to make such a contract.

Home Telephone, etc., Co. *v.* Los Angeles, 211 U. S. 265.
See also—
Owensboro *v.* Cumberland Telephone, etc., Co., 230 U. S. 58, as to reservation of control of streets.

Penalty for nondelivery of telegram.—State statute giving to the person to whom a telegraphic message is addressed a right to recover a penalty for nondelivery does not affect or impair a contract of the company with the sender, which provides against liability for mistakes in transmission, unless the sender orders the message repeated.

Western Union *v.* James, 162 U. S. 650.

Contracts of insurance companies—*In general.*—An insurance corporation is "subject to such reasonable regulations, in respect to the general conduct of its affairs, as the legislature may from time to time prescribe which do not materially interfere with or obstruct the substantial enjoyment of the privileges the State has granted." The company and its policyholders have no such contract with the State as is impaired by State statutes, subjecting it to certain regulations, and compelling it to cease business when the circumstances set forth in the statute are fully established.

Chicago Life Ins. Co. *v.* Needles, 113 U. S. 580.
See also—
Wright *v.* Minnesota, etc., Ins. Co., 193 U. S. 662.
Polk *v.* Mutual Reserve Fund, 207 U. S. 310.
Eagle Ins. Co. *v.* Ohio, 153 U. S. 446.
National Union *v.* Wanberg, 260 U. S. 71.

Penalizing failure to pay loss.—A statute which authorizes the recovery of a penalty against an insurance company for failure to pay a loss when it is "made to appear to the court or jury trying the case that the refusal to pay said loss was not in good faith," and that such refusal inflicted "additional

expense, loss, or injury" upon the policyholder does not impair rights secured by the contract of insurance.

Fraternal Mystic Circle *v.* Snyder, 227 U. S. 503.

Exemptions from debts.—State law exempting policy payable to estate of insured invalid as applied to debt under promissory note antedating law and to policies also antedating it though later than note.

Bank of Minden *v.* Clement, 256 U. S. 126.

Contracts of banking corporations—*In general.*—A charter granted to a bank constitutes a contract which the State can not impair, and a provision in a charter can not be abrogated by subsequent legislation. A provision that a bank's bills shall be receivable for taxes or other debts due the State is an obligation protected by this clause.

Woodruff *v.* Trapnall, 10 How. 206.
Furman *v.* Nichol, 8 Wall. 63.
Paup *v.* Drew, 10 How. 222.
Planters' Bank *v.* Sharp, 6 How. 319.
Barings *v.* Dabney, 19 Wall. 11.
Keith *v.* Clark, 97 U. S. 454.
State *v.* Stoll, 17 Wall. 436.
Knox *v.* Exchange Bank, 12 Wall. 382.
Ohio Life Ins. Co. *v.* Debolt, 16 How. 435.

A banking corporation, the stock of which is owned by private individuals, is a private corporation, but a State can not incorporate associations of individuals and authorize them to coin money. If a State creates a bank of which it is the sole stockholder, it can not withdraw the fund or any part without impairing the contracts of the bank's creditors.

State Bank of Ohio *v.* Knoop, 16 How. 369.
Briscoe *v.* Bank of Kentucky, 11 Pet. 257.
Curran *v.* Arkansas, 15 How. 320.

Assessments by State.—Contract obligations under a bank's charter which is subject to alteration or repeal are not unconstitutionally impaired by the levy and collection, under a State statute, of an assessment based upon average daily deposits, for the purpose of creating a depositors' guarantee fund to secure the full repayment of deposits in case it or any other bank existing under the State laws becomes insolvent, unless such statute deprives the bank of liberty or property without due process of law.

Noble State Bank *v.* Haskell, 219 U. S. 104.
Shellenberger *v.* First State Bank, 219 U. S. 114.

In Sherman v. Smith (1 Black 593), it was held that articles of association adopted by the stockholders of a bank are not a contract with the State, and that the State may make the shareholders responsible for the debts of the bank.

Payment of private debts.—Prior to the passage of the bank guarantee law of Kansas (Laws 1909, c. 61), a banking corporation of that State had no authority under the statutes to use its property for the payment of the private debt of a third party for which it was in no way liable. By such act any such banking corporation having the required qualifications was authorized to accept its provisions by a vote of its directors, authorized by its stockholders, and on such acceptance was required to make a deposit of bonds or cash with the State treasurer and to pay assessments annually to create a State fund to be used to secure the payment in full of certain classes of depositors in any insolvent bank which had accepted its provisions. Held that, as against a nonconsenting stockholder of a bank previously organized which accepted its provisions, such act was unconstitutional and void, as impairing the obligation of his contract as a stockholder, since the State, having no power to take the property of the corporation to pay the private debt of another, such as that of another bank to a depositor, could not authorize the corporation to so use it as against a dissenting stockholder.

Larabee *v.* Dolley, 175 Fed. 365, order reversed in Dolley *v.* Abilene Nat. Bank, 179 Fed. 461, and decree affirmed in Assaria State Bank *v.* Dolley, 219 U. S. 121.

Every valuable privilege given by the charter of a bank and which conduced to an acceptance of it and an organization under it, is a contract which cannot be changed by the legislature where the power to do so is not reserved in the charter.

State Bank of Ohio *v.* Knoop, 16 How. 380.

See also—

Crawford *v.* Branch Bank, 7 How. 282, as to authorizing suits on notes.

Escheat of deposits to State.—Law escheating, through appropriate procedure, deposits long unclaimed does not violate contract rights of banks.

Security Bank *v.* California, 263 U. S. 282.

Taxation.[1]—As to taxation of banks, see—

State Bank of Ohio *v.* Knoop, 16 How. 377.
Dodge *v.* Woolsey, 18 How. 331.
Mechanics' etc., Bank v. Debolt, 18 How. 380.

See also—

Providence Bank *v.* Billings, 4 Pet. 558, as to taxation of capital stock.
Clement Nat. Bank *v.* Vermont, 231 U. S. 120, as to tax on bank deposits.
Bank of Kentucky *v.* Kentucky, 207 U. S. 258, as to changing date of assessment of bank for taxation.
Bank of Oxford *v.* Love, 250 U. S. 603, as to providing for reasonable examinations and reports and an enforced contribution of the bank therefor.
National Safe Deposit Co. *v.* Stead, 232 U. S. 58, as to contracts of safe deposit companies.

[1] See same subject, pp. 74, 180, 315, 600, 636, 707, 728, and 745.

A State legislature has no power to legalize the suspension of specie payments by a bank, nor to extend the time for such payments, as any such law would impair contracts.

Godfrey *v.* Terry, 97 U. S. 171.

Contracts of bridge and ferry companies.—A charter granted to a bridge or ferry corporation is a contract. A new ferry or bridge materially diverting travel or business from an old one established under a prior charter is not unconstitutional unless the franchise under such charter is expressly made exclusive. A franchise to operate a ferry in the neighborhood of a prior ferry does not impair any obligation in the ferry franchise, and the licensing of one ferry can not preclude the licensing of a second parallel ferry. A franchise may be, in terms, exclusive, and when this is so a contract exists which the legislature can not impair.

Bridge Proprietors *v.* Hoboken Co., 1 Wall. 116.
Charles River Bridge *v.* Warren Bridge, 11 Pet. 544.
East Hartford *v.* Hartford Brdg. Co., 10 How. 533.
Mills *v.* St. Clair County, 8 How. 581.
See also—
The Binghamton Bridge, 3 Wall. 51.
Covington, etc., Co. *v.* Sandford, 164 U. S. 578.
Conway *v.* Taylor, 1 Black 603.
Wheeling, etc., Brdg. Co. *v.* Wheeling Brdg. Co., 138 U. S. 292.
Williams *v.* Wingo, 177 U. S. 601.

Where New York and Canadian companies, after consolidation, constructed a bridge over Niagara River for railroad uses only, held, that new company had no contract immunity from being required to add foot and carriage ways in New York, as contemplated by both original charters, irrespective of whether the duty, expressed positively in the Canadian charter, attached to the consolidation in New York.

International Bridge Co. *v.* New York, 254 U. S. 126.

Contracts of turnpike and canal companies.—The charters of turnpike and canal companies, like other charters, are contracts within the meaning of the obligation clause. The licensing of a new road or canal materially diverting travel or business from an old one established under a prior charter is not unconstitutional unless the franchise is defined or made exclusive.

Chesapeake & Ohio Canal Co. *v.* Baltimore, etc., R. Co., 4 Gill. & J. 1.
Turnpike Co. *v.* Maryland, 3 Wall. 210.
Carondelet Canal, etc., Co. *v.* Louisiana, 233 U. S. 362.
Columbia Water Power Co. *v.* Columbia St. R., etc., Co., 172 U. S. 475.

A claim of immunity from legislative control of tolls to be exacted by a corporation authorized to construct a road is subject to the same rule of strict interpretation as a grant of immunity from taxation, and an exemption from the exercise of the State's right in this regard will never be implied from anything short of an explicit unequivocal provision.

Covington Turnpike Co. *v.* Sandford, 164 U. S. 578.
Ruggles *v.* Illinois, 108 U. S. 531.
Pennsylvania R. Co. *v.* Miller, 132 U. S. 84.
Perrine *v.* Chesapeake, etc., Canal Co., 9 How. 192.

Contracts of subway companies.—A State statute creating a board of commissioners of electrical subways, and requiring all companies to obtain its approval of their plans and specifications before commencing work, and during the progress thereof, to submit to such modifications and regulations as the board may prescribe, is applicable to a company organized under a prior act, though it had previously obtained permission from the city by an ordinance providing minute regulations as to the form, size, and location of the subways, and requiring the work to be done under the supervision of the commissioner of public works, and no substantial right and the obligation of no contract is impaired by the act.

New York *v.* Squire, 145 U. S. 175.

Clause 2.—IMPOSTS AND DUTIES.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

Leading Cases

Pittsburg Coal Co. *v.* Louisiana (156 U. S. 590), where the court said that "The terms 'imports' and 'exports' apply only to articles imported from foreign countries or exported to them."

Woodruff *v.* Parham (8 Wall. 123), where it was held that the term "imports" in this sense refers to articles imported from foreign countries into the United States and not to articles imported from one State into another.

Low *v.* Austin (13 Wall. 33), in which the court said:

> When the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State.

May *v.* New Orleans (178 U. S. 508), the "original package" doctrine in connection with imports.[1]

Nathan *v.* Louisiana (8 How. 81), establishing the rule that "Before the article becomes an export, or after it ceases to be an import, by being mingled with other property in the State, it is a subject of taxation by the State."

See also—
American Steel, etc., Co. *v.* Speed, 192 U. S. 500.

[1] See also same subject, pp. 139 and 193.

Turner *v.* Maryland (107 U. S. 54), in which the court said:

It is a circumstance of weight that the laws referred to in the Constitution are by it made "subject to the revision and control of Congress." Congress may, therefore, interpose, if at any time any statute, under the guise of an inspection law, goes beyond the limit prescribed by the Constitution, in imposing duties or imposts on imports or exports.

McLean *v.* Denver, etc., R. Co. (203 U. S. 38), holding that the language "except what may be absolutely necessary for executing its inspection laws" is not violated by a State inspection law, which applies to goods shipped only from one State to another.

Construction and Application

In General

States can not lay imposts or duties on imports or exports, except what may be absolutely necessary to execute their inspection laws, not because Congress may lay and collect taxes, duties, imposts, and excises, but because the Constitution expressly provides that no State shall exercise that power without the consent of the Congress.

Hamilton Company *v.* Massachusetts, 6 Wall. 639.

The sole limitation upon the taxing power of the State is the inhibition upon duties of tonnage or imposts upon exports and imports.

Railroad Co. *v.* Peniston, 18 Wall. 29.

Application to Persons

Inspection laws, and the words "imports or exports" as used in this clause, refer to property and not to persons, and can have no reference to free human beings.

People *v.* Compagnie Gen. Transatlantique, 107 U. S. 59.
Crandall *v.* Nevada, 6 Wall. 35.

Imports and Exports

"Imports" within the Constitutional prohibition upon the States against taxing imports means goods from a foreign country. The prohibition does not embrace goods brought from other States, and a tax upon such goods is not invalidated by this clause. The term "imports" being applied to articles brought from foreign countries, *e converso* the term "exports" is applicable, under this clause, only to goods sent to foreign countries.

Brown *v.* Maryland, 12 Wheat. 419.
Woodruff *v.* Parham, 8 Wall. 123.
Patapsco Guano Co. *v.* North Carolina, 171 U. S. 350.
License Cases, 5 How. 594.
Hinson *v.* Lott, 8 Wall. 148.
Case of State Freight Tax, 15 Wall. 232.
Guy *v.* Baltimore, 100 U. S. 434.
Brown *v.* Houston, 114 U. S. 628.
Pittsburgh Coal Co. *v.* Bates, 156 U. S. 587.
Pittsburgh, etc., Coal Co. *v.* Louisiana, 156 U. S. 600.
Dooley *v.* U. S., 182 U. S. 222.
McLean *v.* Denver, etc., R. Co., 203 U. S. 38.

Goods in the lower harbor of Mobile, bought so as to remain at the risk of the vendor and being entered and the duty secured before transshipment, are imported before purchase, and a tax upon the purchaser is not a tax on imports; but a statute taxing imports as imports on their way to become incorporated with the general mass of property is unconstitutional. So with exports; goods collected at the *entrepot* are not yet exports nor in process of exportation; exportation does not begin until goods are committed to a carrier for transportation or have started on their ultimate passage to their destination.

Waring *v.* Mayor, 8 Wall. 118.
Emert *v.* Missouri, 156 U. S. 313.
Coe *v.* Errol, 116 U. S. 525.
State Tax on Railway Gross Receipts, 15 Wall. 284.
Leisy *v.* Hardin, 135 U. S. 108.

In Austin *v.* Tennessee (179 U. S. 351) the court said:

A casual remark, however, made by Chief Justice Marshall in that case (Brown *v.* Maryland, 12 Wheat. 419) that "we suppose the principles laid down in this case to apply equally to importations from a sister State," was subsequently considered in Woodruff *v.* Parham (8 Wall. 123) and was held to have no application to commerce between the States, the court deciding that the term "import," as used in that clause which declares that "no State shall levy any imposts or duties on imports or exports," did not refer to articles imported from one State into another, but only to articles imported from foreign countries into the United States. In that case an ordinance of the city of Mobile, authorizing a tax upon sales at auctions, was held to be applicable to products of States other than Alabama, although the articles were sold in the original and unbroken packages.

Whatever primary meaning be indicated by its derivation, the word "export," as used in the Constitution and laws of the United States, generally means the transportation of goods from this to a foreign country.

Swan & Finch Co. *v.* U. S., 190 U. S. 143.

State Taxation [1]

Definition of "Impost"

An "impost" is a tax levied on articles brought into the country; it is not merely a duty on the act of importation but a duty on the thing imported; it is a duty on imported goods and merchandise.

Brown *v.* Maryland, 12 Wheat. 419.
Hinson *v.* Lott, 8 Wall. 148.

Definition of "Duties"

"Duties" are defined to be things due and recoverable by law. Applied in its widest signification, the term is hardly less comprehensive than "taxes," and in its most restricted meaning as to customs it is almost the synonym of "imposts." The

[1] See same subject, pp. 180, 315, 362, 600, 636, 707, 728, and 745.

prohibition contained in this clause is a limitation on the power of the State to levy taxes.

Pacific Ins. Co. *v.* Soule, 7 Wall. 445.
Gibbons *v.* Ogden, 9 Wheat. 201.
Hamilton Company *v.* Massachusetts, 6 Wall. 639.

Object of the Prohibition

The object is to protect both vessel and cargo from State taxation while in transit, and it can not be evaded and the same result effected by calling the tax one on the passengers or on the master; the purpose and validity of the statute must be determined by its natural and reasonable effect. The prohibition is general and reaches a tax on the sale of the article imported and on the occupation of the importer.

Passenger Cases, 7 How. 501.
Henderson *v.* New York, 92 U. S. 269.
Cook *v.* Pennsylvania, 97 U. S. 573.
License Cases, 5 How. 504.

Tax on Sales

Sale is the object of importation and is an essential ingredient of that intercourse of which importation constitutes a part, and by the payment of duty the importer purchases the right to dispose of his goods as well as to bring them into the country. The payment of duties includes the authority to sell without the necessity of a State license; so a State law requiring importers to take out a license to sell imported goods is an indirect tax upon imports. A tax on sales of imported merchandise in original packages by brokers and auctioneers is unconstitutional, but a tax on the gross sales of a purchaser from the importer is not a tax on imports.

Brown *v.* Maryland, 12 Wheat. 447.
Gibbons *v.* Ogden, 9 Wheat. 212.
Low *v.* Austin, 13 Wall. 33.
Waring *v.* Mayor, 8 Wall. 122.
Hinson *v.* Lott, 8 Wall. 152.
Pervear *v.* Commonwealth, 5 Wall. 478.
Bowman *v.* Chicago, etc., R. Co., 125 U. S. 494.
Schollenberger *v.* Pennsylvania, 171 U. S. 24.
Burke *v.* Wells, 208 U. S. 14.

A tax on bills of lading of foreign articles is a tax on imports, and void, and a law requiring a stamp to be affixed to every bill of lading for goods exported is in substance a duty on the goods and is unconstitutional. Where, however, the requirement that an article intended for export shall be stamped merely provides a mode for denoting such intention, it can not be said to impose a duty on exports.

Almy *v.* California, 24 How. 174.
Pace *v.* Burgess, 92 U. S. 372.
Case of the State Freight Tax, 15 Wall. 280.
Turpin *v.* Burgess, 117 U. S. 504.

Succession Tax[1]

State statute providing that every person not domiciled within the State, and not being a citizen of any State or Territory in the Union, who shall be entitled as heir, legatee, or donee to the whole or any part of the succession of a person deceased, shall pay a tax to the State of 10 per cent of the value thereof, is not invalid as an attempted imposition of a tax on the exportation of property; but it is merely a condition imposed on the right of an alien to take and hold property within the State.

Mager *v.* Grima, 8 How. 490.

Wharfage and Other Port or Harbor Charges

Pilotage fees or penalties are not imposts or duties within the meaning of this clause.

Cooley *v.* Philadelphia, 12 How. 299.

City ordinances for the collection of wharfage held not to conflict with this clause.

Union Packet Co. *v.* St. Louis, 100 U. S. 423.

Public wharfage charges not applying to vessels carrying products of the State in which they were imposed and claimed to conflict with this clause were held to be imposed in violation of the Constitution.

Guy *v.* Baltimore, 100 U. S. 437.

Inspection Taxes

A tax levied to cover the expenses of inspection is an exception to the constitutional prohibition on the States to lay duties on imports and exports. The collection of the amount necessary to execute State inspection laws is expressly authorized by this clause.

Brown *v.* Maryland, 12 Wheat. 438.
Patapsco Guano Co. *v.* North Carolina, 171 U. S. 354.
Turner *v.* Maryland, 107 U. S. 57.

The object of State inspection laws is to improve the quality of articles produced and fit them for articles of commerce, and they are upheld as necessary to promote the interests of commerce. So far as such laws operate on articles for export they are generally executed on land before the articles are put on board; and so far as they operate on imports they are generally executed on articles already landed.

Gibbons *v.* Ogden, 9 Wheat. 203.
State Tonnage Tax Cases, 12 Wall. 204.
Bowman *v.* Chicago, etc., R. Co., 125 U. S. 488.

An inspection law may require every hogshead of tobacco intended for export to be brought to a State warehouse to be inspected and branded and to pay charges for storage and inspection. A State law providing for the inspection of imported

[1] See same subject, pp. 319, 713, and 729.

liquors, to be valid, must not substantially hamper the constitutional right to make or receive shipments.

Turner *v.* Maryland, 107 U. S. 55.
Vance *v.* Vandercook, 170 U. S. 456.

An inspection charge of 80 cents per hundred for stamps to be affixed to commercial feeding stuffs is not so unreasonably in excess of the cost of inspection as to invalidate the statutes when applied to sales by importers in original packages.

Savage *v.* Jones, 225 U. S. 501.
Standard Stock Food Co. *v.* Wright, 225 U. S. 540.

Stamp Tax on Bill of Exchange

A bill of exchange is neither an export nor an import. It is not transmitted through the ordinary channels of commerce, but through the mail. It is a note merely ordering the payment of money, which may be negotiated by indorsement, and the liability of the names that are on it depends upon certain acts to be done by the holder when it becomes payable.

Nathan *v.* Louisiana, 8 How. 81.

Tax on Foreign Warehouse Receipt

A tax on German warehouse receipts for whisky exported to that country, as a tax on the property represented by the receipts, is invalid.

Selliger *v.* Kentucky, 213 U. S. 200.

Taxation of Capital Invested in Exports

If the capital of one who was employed in the business of purchasing cotton for exportation from the United States to foreign countries, through the customs department, was, in fact, in money on the date he was assessed on his personal property, he could not escape a subsequent assessment of that money upon the ground that, at the time the assessment was made, it was invested in cotton for exportation to foreign countries.

People *v.* Commissioners, 104 U. S. 467.

Clause 3.—TONNAGE DUTIES—TROOPS—COMPACTS.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Leading Cases

Green *v.* Biddle (8 Wheat. 85), in which it was said that "the Constitution makes no provision respecting the mode or form in which the consent of Congress is to be signified, very properly leaving that matter to the wisdom of that body, to be decided upon according to the ordinary rules of law and of right reason."

Virginia *v.* West Virginia (11 Wall. 39), in which it was held (p. 60) that the consent which the Constitution requires as to valid agreements under this clause between States is not necessarily to be an expressed consent but may be inferred from circumstances.

Virginia *v.* Tennessee (148 U. S. 503), holding:

> The Constitution does not state when the consent of Congress shall be given; whether it shall precede or may follow the compact made or whether it shall be express or may be implied. In many cases the consent will usually precede the compact or agreement, as where it is to lay a duty of tonnage, to keep troops or ships of war in time of peace, or to engage in war. But where the agreement relates to a matter which could not well be considered until its nature is fully developed, it is not perceived why the consent may not be subsequently given (p. 521).

Wharton *v.* Wise (153 U. S. 173), in which the court said:

> The consent of Congress to any agreement or compact between two or more States is sufficiently indicated, when not necessary to be made in advance, by the adoption or approval of proceedings taken under it.

Gibbons *v.* Ogden (9 Wheat. 202), in which Chief Justice Marshall said:

> A duty of tonnage is as much a tax as a duty on imports or exports; and the reason which induced the prohibition of those taxes extends to this also.

Inman Steamship Co. *v.* Tinker (94 U. S. 243) held:

> Tonnage, in our law, is a vessel's "internal cubical capacity in tons of 100 cubic feet each," to be ascertained in the manner prescribed by Congress. Tonnage duties are duties upon vessels in proportion to their capacity. The term formerly applied to merchandise, and is defined in Cowell's Law Directory as follows: "Tonnage is a custom or impost paid to the King for merchandise carried out or brought in ship, or such like vessels, according to a certain rate upon every ton. The vital principle of such a tax or duty is that it is imposed, whatever the subject, solely according to the rule of weight, either as to the capacity to carry, or the actual weight of the thing itself."

Huse *v.* Glover (119 U. S. 549), defining a duty of tonnage to be "a charge upon a vessel according to its tonnage, as an instrument of commerce, for entering or leaving a port, or navigating the public waters of the country; and the prohibition was designed to prevent the States from imposing hindrances of this kind to commerce carried on by vessels."

Holmes *v.* Jennison (14 Pet. 571), where Chief Justice Taney said:

> The words "agreement" or "compact" could not have been idly or superfluously used by the framers of the Constitution; they can not be said to mean the same thing with the word "treaty." They evidently mean something more, and were designed to make the prohibition more comprehensive.

St. Louis, etc., R. Co. *v.* James (161 U. S. 545), holding that a railroad company incorporated in one State may, if authorized by the State of its creation, extend its lines of road into another State and receive from that State grants of power to

own, lease, purchase, or control railroads therein, and subject itself to the regulations and requirements of said State, and such legislation by the several States does not, in the absence of adverse legislation by Congress, come within the constitutional prohibition against agreements or compacts between States.

Tonnage Duties

Definition

A tonnage duty is a charge on a vessel according to its capacity. The object of this prohibition was to protect the freedom of commerce, and it should be so construed.

Inman Steamship Co. *v.* Tinker, 94 U. S. 245.
Pittsburgh, etc., Coal Co. *v.* Louisiana, 156 U. S. 600.

The prohibition in this clause is general, withdrawing the power from the States except by the consent of Congress. The power to levy tonnage duties resides solely in Congress, and its consent is necessary to the exercise of any such power by the States.

State Tonnage Tax Cases, 12 Wall. 214.
Gibbons *v.* Ogden, 9 Wheat. 201.
Ward *v.* Maryland, 12 Wall. 427.
Green *v.* Biddle, 8 Wheat. 87.

"Duty" means a custom or toll, and as here used is not less comprehensive than the broad term "tax," and any duty, whether a fixed sum upon the whole tonnage of a vessel or to be ascertained by comparing tonnage with rate of duty, comes within the prohibition.

Sheffield *v.* Parsons, 3 Stew. & P. 302.
Pacific Ins. Co. *v.* Soule, 7 Wall. 445.
Steamship Co. *v.* Portwardens, 6 Wall. 31.
Cannon *v.* New Orleans, 20 Wall. 581.
Transportation Co. *v.* Wheeling, 99 U. S. 284.

A State license fee for ferrying on a navigable river is not a tonnage tax, but is a proper exercise of the police power, and the fact that a vessel is enrolled under Federal laws does not exempt it. A State can not levy a tax on tonnage upon interstate transportation. But a tax based upon the gross receipts derived from transportation is unobjectionable. Such a tax, however, must be in the nature of a property tax; a tax upon the receipts as such is void.

Wiggins Ferry Co. *v.* East St. Louis, 107 U. S. 376.
Case of State Freight Tax, 15 Wall. 232.
State Tax on Railway Gross Receipts, 15 Wall. 296.
McHenry *v.* Alford, 168 U. S. 670.
Fargo *v.* Michigan, 121 U. S. 242.
See also—
Moran *v.* New Orleans, 112 U. S. 74.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 212.
Philadelphia Steamship Co. *v.* Pennsylvania, 122 U. S. 338.
Osborne *v.* Mobile, 16 Wall. 481.

A State can not impose a tonnage tax or duty to defray the expenses of its quarantine system, but a fixed fee for examination imposed on all vessels passing quarantine is valid. Charges for pilotage are not repugnant to this clause, and this notwithstanding the law charges vessels with half fees if a pilot is not taken.

Peete *v.* Morgan, 19 Wall. 581.
Morgan *v.* Louisiana, 118 U. S. 462.
Cooley *v.* Philadelphia, 12 How. 313.
Steamship Co. *v.* Joliffe, 2 Wall. 457.
Ex parte McNiel, 13 Wall. 242.

Wharfage Fees and Other Harbor Charges

Where a State, or a city by authority of a State, has improved its rivers and harbors by erecting docks and wharves, it may regulate their use and charge tolls therefor. Wharfage charged to vessels for the use of a wharf is not a tonnage duty, notwithstanding it is graduated according to the size of the vessels, computed by their tonnage. For the purpose of regulating the compensation to be paid, it is immaterial whether the wharf were built by the State, a municipal corporation, or an individual; and where a wharf is owned by a city the fact that the city realizes a profit beyond the amount expended does not render the toll objectionable.

Packet Co. *v.* Catlettsburg, 105 U. S. 563.
Packet Co. *v.* Keokuk, 95 U. S. 84.
Ouachita Packet Co. *v.* Aiken, 121 U. S. 449.
Transportation Co. *v.* Parkersburg, 107 U. S. 702.
Packet Co. *v.* St. Louis, 100 U. S. 429.
Vicksburg *v.* Tobin, 100 U. S. 430.
Cannon *v.* New Orleans, 20 Wall. 577.
U. S. *v.* Hvoslef, 237 U. S. 1.

Services of harbor masters for which fees are allowed must be actually rendered, and a law allowing harbor masters or port wardens to impose a fee in all cases is void. Fees exacted for the use of improved rivers and locks or canals are not repugnant to this clause, and charges may be based upon tonnage, as in the case of wharves.

Steamship Co. *v.* Portwardens, 6 Wall. 31.
Huse *v.* Glover, 119 U. S. 548.
Sands *v.* Manistee River Imp. Co., 123 U. S. 296.

Agreement or Compact [1]

In General

As respects their local government, the States are sovereign within their own limits and foreign to each other. This sovereignty of the States in their relations with each other is qualified in that they have surrendered their treaty-making powers to the General Government, and it is the right and duty of the

[1] See same subject under clause 1 of this section, p. 270.

General Government to protect the interests of the several States in their relations with each other.

Buckner *v.* Finley, 2 Pet. 591.
Mahon *v.* Justice, 127 U. S. 705.
Holmes *v.* Jennison, 14 Pet. 571.
Florida *v.* Georgia, 17 How. 478.
U. S. Bank *v.* Daniel, 12 Pet. 54.
U. S. *v.* Rauscher, 119 U. S. 412.

The terms "compacts" and "agreements," as used in this section, cover all stipulations affecting the conduct or claims of States, whether verbal or written, formal or informal, positive or implied, with each other or with foreign powers. Such an agreement or compact as is in its nature political, or which may conflict with the powers delegated to the General Government, as on the question of boundary between the States or the surrender of fugitives, can not operate as a restriction upon the powers of Congress under the Constitution.

Virginia *v.* Tennessee, 148 U. S. 520.
Union R. Co. *v.* East Tennessee R. Co., 14 Ga. 327.
Virginia *v.* West Virginia, 11 Wall. 60.
Wilson *v.* Mason, 1 Cranch 45.
Pennsylvania *v.* Wheeling, etc., Brdg. Co., 18 How. 421.
New Hampshire *v.* Louisiana, 108 U. S. 76.
Missouri *v.* Iowa, 7 How. 667.
Rhode Island *v.* Massachusetts, 12 Pet. 657.
Wharton *v.* Wise, 153 U. S. 167.

If these compacts are with foreign nations, they interfere with the treaty-making power, which is conferred entirely on the General Government; if with each other, for political purposes, they can scarcely fail to interfere with the general purpose and intent of the Constitution.

Barron *v.* Baltimore, 7 Pet. 249.

Controversies between the several States arising out of public relations and intercourse can not be settled either by war or diplomacy, though, with the consent of Congress, they may be composed by agreement.

Louisiana *v.* Texas, 176 U. S. 17.

Compact between the States of Oregon and Washington, ratified by act of Congress of April 8, 1918, limiting right to issue fishing licenses in Columbia River, is valid.

Olin *v.* Kitzmiller, 259 U. S. 260.

Boundary Lines

A compact or agreement between two States as to a boundary line will be within the prohibition of the Constitution, or without it, according as the establishment of the boundary line may or may not lead to the increase of the political power or influence of the States affected, and thus encroach, or not, upon the full and free exercise of Federal authority. If the boundary estab-

lished is so run as to cut off an important and valuable portion of a State, the political power of the State enlarged would be affected by the settlement of the boundary; and to an agreement of such a boundary, or rather its adoption afterwards, the consent of Congress may well be required. But if the running of a boundary may have no effect upon the political influence of either State, and may simply serve to mark and define that which actually existed before but was indefinite and unmarked, an agreement for the running of the line or its actual survey would in no respect displace the relation of either of the States to the General Government.

Virginia *v.* Tennessee, 148 U. S. 520.
North Carolina *v.* Tennessee, 235 U. S. 1.
Florida *v.* Georgia, 17 How. 491.
Poole *v.* Fleeger, 11 Pet. 185.
Rhode Island *v.* Massachusetts, 12 Pet. 724.

A legislative declaration following the line designated as the boundary between two States, that it is correct and shall thereafter be deemed the true and established line, does not impair, by itself, a contract or agreement with an adjoining State. It is the legislative declaration which the States and individuals affected by the recognized boundary line may invoke against the State as an admission, but not as a compact or agreement.

Monongahela Nav. Co. *v.* U. S., 148 U. S. 312.

The compact entered into between Virginia and Maryland, in 1785, which provided, *inter alia*, that the Potomac River should be a common highway for purposes of navigation and commerce to the citizens of both States, etc., did not settle the question of boundary between the States.

Marine R. Co. *v.* U. S., 257 U. S. 47.

Troops

The States can not, without the consent of Congress, levy war, or make peace, or enter into a compact with any other State. The organization and maintenance of an active State militia is not a keeping of troops in time of peace within the prohibition of this clause. This clause contemplates the use of the State's military power to put down an armed insurrection too strong to be controlled by civil authority, and the State concerned must determine what degree of force the crisis demands.

New Hampshire *v.* Louisiana, 108 U. S. 76.
Dunne *v.* People, 94 Ill. 120.
Luther *v.* Borden, 7 How. 45.
State *v.* Wagener, 77 N. W. 424.
Presser *v.* Illinois, 116 U. S. 252.
Alabama Great Sou. R. Co. *v.* U. S., 49 Ct. Cl. 522.

ARTICLE II

EXECUTIVE DEPARTMENT

ARTICLE II—EXECUTIVE DEPARTMENT.

Section 1.—THE PRESIDENT.

Clause 1.—TERM OF OFFICE.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Leading Cases

Kendall *v.* U. S. (12 Pet. 610), holding that as far as his power is derived from the Constitution the President is beyond the reach of any other department of the Government with the single exception prescribed by the Constitution for his impeachment.

Marbury *v.* Madison (1 Cranch 166), in which it was held that—

> Where the heads of departments are the political or confidential agents of the Executive, merely to execute the will of the President, or, rather, to act in cases in which the Executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy.

Runkle *v.* U. S. (122 U. S. 557), holding that in the exercise of his Executive powers under the Constitution the President may act through the heads of the appropriate executive departments, and their official acts done in the regular course of official business are presumed to be his acts.

Executive Powers

In General

Under the Constitution certain political powers are vested in the President which are to be exercised by him in his discretion without any hindrance or control on the part of the judiciary, and in the performance of any act involving the exercise of discretion the Executive is exempt from *mandamus* or injunction. Nor is the President subject to the writ of *habeas corpus*.

Marbury *v.* Madison, 1 Cranch 169.
Mississippi *v.* Johnson, 4 Wall. 500.
In re Keeler, Hemp. 306.
See also—
In re Kaine, 14 How. 119.
Board of Liquidation *v.* McComb, 92 U. S. 541.
Craig *v.* Leitensdorfer, 123 U. S. 211.
Quackenbush *v.* U. S., 177 U. S. 25.
Georgia *v.* Stanton, 6 Wall. 77.
Boynton *v.* Blaine, 139 U. S. 319.
Keim *v.* U. S., 177 U. S. 293.

The President properly acts through the heads of the several departments of the executive branch of the Government in relation to the subjects appertaining to their respective duties, and the acts of such department heads are deemed to be the acts of the President himself. The discretionary acts of executive departments are exempt from judicial control.

Williams *v.* U. S., 1 How. 298.
Wilcox *v.* McConnel, 13 Pet. 513.
Bartlett *v.* Kane, 16 How. 272.
See also—
Runkle *v.* U. S., 122 U. S. 557.
U. S. *v.* Farden, 99 U. S. 19.
Hegler *v.* Faulkner, 153 U. S. 117.
U. S. *v.* Bashaw, 152 U. S. 443.
Carrick *v.* Lamar, 116 U. S. 426.

Instances of acts which the courts have held to be discretionary are to be found in:

Decatur *v.* Paulding, 14 Pet. 517.
Brashear *v.* Mason. 6 How. 101.
Reeside *v.* Walker, 11 How. 290.
U. S. *v.* Seaman, 17 How. 230.
U. S. *v.* Guthrie, 17 How. 304.
Commissioner of Patents *v.* Whiteley, 4 Wall. 534.
Gaines *v.* Thompson, 7 Wall. 350.
Secretary *v.* McGarrahan, 9 Wall. 312.
U. S. *v.* Black, 128 U. S. 45.
U. S. *v.* Lynch, 137 U. S. 286.
Redfield *v.* Windom, 137 U. S. 643.

A distinction is to be made between those acts which involve the exercise of judgment or discretion, and those in which the duty is merely ministerial. In the latter class of acts the duty is one "imposed by law, peremptorily and plainly defined." When these acts are in question the officer is required to abandon his right to exercise his personal judgment, and the performance of the act may be compelled or forbidden as the right appears to the court.

Marbury *v.* Madison, 1 Cranch 173.
Knox County *v.* Aspinwall, 24 How. 376.
International Contracting Co. *v.* Lamont, 155 U. S. 308.
Gaines *v.* Thompson, 7 Wall. 352.
U. S. *v.* Schurz, 102 U. S. 395.
Noble *v.* Union, etc., R. Co., 147 U. S. 171.

Political Questions

Political questions are always matters of discretion, and as to these the courts dislaim any right of control, and when the executive department has not parted with its power over a political matter the intervention of the judicial department can not be invoked. Of a political nature are questions relating to the recognition of the existence of an Indian tribal relation; the public character of a person claiming to be a foreign minister;

the fixing of the date when foreign jurisdiction over acquired territory ceases; whether or not a State constitution or an amendment thereof has been ratified by the people; whether military authority has been established; how long military occupation of territory shall be necessary; the question as to the existence of a treaty; the recognition of sovereignty of foreign States; the determination of disputed boundaries between the United States and a foreign nation; the regulation of the admission of foreigners.

Marbury *v.* Madison, 1 Cranch 169.
Boynton *v.* Blaine, 139 U. S. 326.
U. S. *v.* Holliday, 3 Wall. 407.
In re Baiz, 135 U. S. 403.
More *v.* Steinbach, 127 U. S. 80.
Luther *v.* Borden, 7 How. 39.
Keely *v.* Sanders, 99 U. S. 446.
Neely *v.* Henkel, 180 U. S. 124.
Terlinden *v.* Ames, 184 U. S. 288.
U. S. *v.* Palmer, 3 Wheat. 634.
De la Croix *v.* Chamberlain, 12 Wheat. 600.
Ekiu *v.* U. S., 142 U. S. 660.
See also—
Foster *v.* Neilson, 2 Pet. 307.
Craig *v.* Missouri, 4 Pet. 438.
In re Cooper, 143 U. S. 503.
The *Divina Pastora*, 4 Wheat. 63.
The *Santissima Trinidad*, 7 Wheat. 283.
Williams *v.* Suffolk Ins. Co., 13 Pet. 420.
Kennett *v.* Chambers, 14 How. 50.
U. S. *v.* Yorba, 1 Wall. 423.
Phillips *v.* Payne, 92 U. S. 132.
Jones *v.* U. S., 137 U. S. 212.
Garcia *v.* Lee, 12 Pet. 516.
U. S. *v.* Reynes, 9 How. 154.

It is the duty of the President to see that the laws are faithfully executed, and injunction will not lie to prevent him or his officers from enforcing them. The enforcement of the constitutional guaranty of a republican form of government belongs to the political department. The obligation conferred upon the President to see the laws faithfully executed does not confer any power to forbid their execution.

Mississippi *v.* Johnson, 4 Wall. 501.
Taylor *v.* Beckham, 178 U. S. 578.
Kendall *v.* U. S., 12 Pet. 613.

While Congress can not delegate to the President power to make a law, with discretion as to what it shall be, yet it may confer upon him authority or discretion as to its execution, to be exercised in pursuance of its provisions. Thus a provision authorizing the President to suspend the provisions of a tariff act is unobjectionable, and this is true of an act regulating the manufacture of oleomargarine and authorizing the Commis-

sioner of Internal Revenue to make regulations concerning marks and brands. A question not necessarily judicial may by statute be submitted to executive officers. If the President assumes powers which should have the authorization or sanction of Congress, a ratification cures the defect. Congress may impose on an executive officer any duty which is not repugnant to any right secured and protected by the Constitution.

Field *v.* Clark, 143 U. S. 693.
In re Kollock, 165 U. S. 536.
Fong Yue Ting *v.* U. S., 149 U. S. 714.
Prize Cases, 2 Black 670.
Marbury *v.* Madison, 1 Cranch 169.

Represented by Heads of Departments

The President in the exercise of his executive power under the Constitution may act through the head of the appropriate executive department. The heads of departments are his authorized assistants in the performance of his executive duties, and their official acts, promulgated in the regular course of business, are presumptively his acts.

Wilcox *v.* McConnel, 13 Pet. 498.
Runkle *v.* U. S., 122 U. S. 557.
See also—
Wolsey *v.* Chapman, 101 U. S. 755.
U. S. *v.* Farden, 99 U. S. 10.
Confiscation Cases, 20 Wall. 92.
Williams *v.* U. S., 1 How. 297.
U. S. *v.* Eliason, 16 Pet. 291.

The Secretary of the Navy represents the President and exercises his power on the subjects confided to his department.

U. S. *v.* Jones, 18 How. 95.

A certificate of the Secretary of War in the following form: "War Department, July 24, 1872. In conformity with the 65th of the Rules and Articles of War, the proceedings of the general court-martial in the foregoing case have been forwarded to the Secretary of War for the action of the President. The proceedings, findings, and sentence are approved, and the sentence will be duly executed. Wm. W. Belknap, Secretary of War," was held to be a sufficient authentication of the judgment of the President.

U. S. *v.* Fletcher, 148 U. S. 86.
See also—
In re Chapman, 166 U. S. 670.
Grafton *v.* U. S., 206 U. S. 333.
Ex parte Reed, 100 U. S. 13.

Clause 2.—ELECTORS.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to

which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Electors are Not Officers of United States

The sole function of the presidential electors is to cast, certify, and transmit the vote of the State for President and Vice President of the Nation. Although the electors are appointed and act under and pursuant to the Constitution of the United States, they are no more officers or agents of the United States than are the members of the State legislatures when acting as electors.

In re Green, 134 U. S. 379.

Discretion of State as to Manner of Appointing Electors

It is competent for a State legislature to provide for the election of an elector and an alternate elector in each of the congressional districts into which the State is divided, and of an elector and an alternate elector at large in each of two districts defined by the statute. The court said in McPherson *v.* Blacker (146 U. S. 25) that this clause of the Constitution—

does not read that the people or the citizens shall appoint, but that "each State shall;" and if the words "in such manner as the legislature thereof may direct" had been omitted it would seem that the legislative power of appointment could not have been successfully questioned in the absence of any provision in the State constitution in that regard. Hence the insertion of those words, while operating as a limitation upon the State in respect of any attempt to circumscribe the legislative power, can not be held to operate as a limitation on that power itself.

Matters Within Control of Congress

Congress is empowered to determine the time of choosing the electors and the day on which they are to give their votes, which is required to be the same day throughout the United States, but otherwise the power and jurisdiction of the States is exclusive, with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that congressional and Federal influence might be excluded.

McPherson *v.* Blacker, supra, at page 35.

Clause 3—ELECTION.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the

Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.][1]

Clause 4.—DATE OF ELECTION.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

See Revised Statutes, sec. 131, for law.

Clause 5.—QUALIFICATIONS.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[1] This clause, in brackets, was superseded by Amendment 12, p. 647.

Clause 6.—REMOVAL.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law, provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Clause 7.—COMPENSATION.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Clause 8.—OATH.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

The appointment of electors and the mode thereof belong exclusively to the States, but the time of choosing them and the day upon which they are to give their votes is determinable by Congress. This clause and that in the twelfth amendment relative to the opening of the vote confer upon Congress the only powers it possesses with relation to the appointment of electors. Where a State law fixes a date for the meeting of presidential electors different from that provided by Congress, if that provision is separable it may be rejected and the act remain otherwise valid. The States have power to punish for illegal voting for presidential electors.

McPherson *v.* Blacker, 146 U. S. 35.
In re Green, 134 U. S. 379.
U. S. *v.* Reese, 92 U. S. 214.

Section 2.—POWERS AND DUTIES OF PRESIDENT.

Clause 1.—COMMANDER IN CHIEF—PARDONS.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

Commander in Chief

In General

As Commander in Chief the President is authorized to direct the movements of the naval and military forces placed under his command, and to employ them in a manner which he may deem most effectual. By virtue of his position he has undoubted power to establish rules and regulations for the government of the Army and Navy, or may modify or repeal or create them anew, and such rules and regulations can not be questioned on the ground that they are unwise. Army and Navy regulations made pursuant to the authority conferred upon the President have the force of law. When promulgated through the Secretary of War they must be received as the acts of the President, and as such are binding on all within the sphere of his authority.

Fleming *v.* Page, 9 How. 603.
U. S. *v.* Eliason, 16 Pet. 302.
U. S. *v.* Freeman, 3 How. 567.
Confiscation Cases, 20 Wall. 109.
See also—
Kurtz *v.* Moffitt, 115 U. S. 503.
Gratiot *v.* U. S., 4 How. 117.
Ex parte Reed, 100 U. S. 22.
Smith *v.* Whitney, 116 U. S. 167.
Johnson *v.* Sayre, 158 U. S. 114.

The power of the President as Commander in Chief must be exercised in accordance with the laws and usages of nations, and in the manner prescribed by Congress; otherwise his orders will afford no protection to an officer acting under them. An instruction to an officer can not justify an act which without it would have been a trespass. He is authorized by law, previous to a declaration of war by Congress, to meet insurrection or invasion by military force. He may, *jure belli*, declare a

blockade of hostile ports in a civil war as well as in a foreign war, or may employ secret agents to enter the enemy's lines to obtain information regarding the latter's strength, resources, and movements, and direct payment therefor out of the contingent fund.

Otis *v.* Bacon, 7 Cranch 589.
Little *v.* Barreme, 2 Cranch 170.
Prize Cases, 2 Black 668.
Totten *v.* U. S., 92 U. S. 107.
See also—
Tracy *v.* Swartout, 10 Pet. 80.
Ex parte Milligan, 4 Wall. 2.
In re Cooper, 143 U. S. 500.
Belknap *v.* Schild, 161 U. S. 18.
Matthews *v.* McStea, 91 U. S. 12.

The President can not establish a prize court or confer power to condemn prizes upon any inferior officer, civil or military. In case of insurrection he may accord to the enemy the character of belligerents.

Jecker *v.* Montgomery, 13 How. 515.

Power to Convene General Courts-Martial

It is within the power of the President of the United States, as Commander in Chief, to validly convene a general court-martial, even where the commander of the accused officer to be tried is not the accuser.

Swaim *v.* U. S., 165 U. S. 558.
Ex parte Milligan, 4 Wall. 127.

Power to Repel Invasion and Suppress Insurrection

The President does not initiate war, but by the acts of Congress of February 28, 1795, and March 3, 1807, he was authorized to call out the military and naval forces of the United States in case of invasion by foreign nations and to suppress insurrection against the government of a State or of the United States.

Prize Cases, 2 Black, 668, which also see as to power of the President to accord belligerent rights to insurgents.

When Commander in Chief of Militia

The President is made Commander in Chief of the Army and Navy of the United States at all times, and Commander in Chief of the Militia only when called into the actual service of the United States.

Johnson *v.* Sayre, 158 U. S. 115.

Departments

The word "departments" clearly means the same thing as in the clause giving Congress the power to vest the appointment of inferior officers in the heads of departments. The "principal officer" in this clause is the equivalent to the "head of the department" in the other.

U. S. *v.* Germaine, 99 U. S. 511.

Conquered Territory

In his capacity as Commander in Chief the President may order the invasion of the enemy's territory, but such conquests can not enlarge the boundaries of the Union. According to the usages of nations, if a nation be not entirely subdued by another, the holding of conquered territory is to be deemed a mere military occupation until its status is determined by the treaty of peace, and the military may hold and occupy conquered territory without incorporation so long as it may seem appropriate to Congress. Where territory is ceded by a treaty of peace the occupation is confirmed, but the territory thus acquired becomes appurtenant to and not a part of the United States; actual incorporation as a part of the Nation can follow only after the action of Congress.

Fleming *v.* Page, 9 How. 615.
American Ins. Co. *v.* Canter, 1 Pet. 542.
Downes *v.* Bidwell, 182 U. S. 342.
New Orleans *v.* Steamship Co., 20 Wall. 398.
U. S. *v.* Huckabee, 16 Wall. 434.

It is the duty of the President so long as war continues to provide for the security of persons and property in territory taken from the enemy's control, and to this end he may institute a temporary military government, which will continue to be a valid government until the ratification of a treaty of peace and the provision by Congress for the formation of another government. The establishment of provisional courts is a part of this power, as also is the collection of duties in the conquered territory.

The *Grapeshot*, 9 Wall. 132.
Texas *v.* White, 7 Wall. 730.
Cross *v.* Harrison, 16 How. 191.
Burke *v.* Miltenberger, 19 Wall. 525.
Downes *v.* Bidwell, 182 U. S. 346.
See also—
Mechanics', etc., Bank *v.* Union Bank, 22 Wall. 296.
Lewis *v.* Cocks, 23 Wall. 469.
U. S. *v.* Castillero, 2 Black 358.
Dooley *v.* U. S., 182 U. S. 234.
Leitensdorfer *v.* Webb, 20 How. 176.

The creation of the provisional court for Porto Rico between April 11, 1899, when ratifications of the treaty by which it was ceded were exchanged, and May 1, 1900, when act of April 12, 1900, establishing a civil government, took effect, was within the scope of the military power, acting by authority of the President as commander in chief, though peace then prevailed, and courts established under Spain were open.

Santiago *v.* Nogueras, 214 U. S. 260.

Martial Law

This is the law of military necessity in the actual presence of war, and finds its justification only where, from actual invasion or civil war, the courts are closed and it is impossible to administer justice according to law.

U. S. *v.* Diekelman, 92 U. S. 526.
Ex parte Milligan, 4 Wall. 127.
Coleman *v.* Tennessee, 97 U. S. 515.
Tarble's Case, 13 Wall. 397.

Pardons for Offenses Against the United States

Definition and Nature

A pardon is an act of grace by which an offender is released from the consequences of his offense. It releases the offender and restores to him all civil rights. But it does not make amends for the past. It affords no relief for what has been suffered by his imprisonment, forced labor, or otherwise; nor does it give compensation for what has been done or suffered, nor impose upon the Government any obligation to give it.

Knote *v.* U. S., 95 U. S. 153.
U. S. *v.* Wilson, 7 Pet. 159.

But it includes the power to grant relief from fines, penalties, and forfeitures which follow from the commission of the offense.

Osborn *v.* U. S., 91 U. S. 474.

The constitutional prerogative of the President to grant reprieves and pardons includes the power to commute punishments.

Ex parte Harlan, 180 Fed. 119; decree affirmed in Harlan *v.* McGourin, 218 U. S. 442.

An indefinite suspension of sentence is beyond the power of the court.

U. S. *v.* Wilson, 46 Fed. 749.

Power of Congress to Control

The power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders.

Ex parte Garland, 4 Wall. 333, in which the act of Congress of January 24, 1865, prohibiting all persons from practice before the Federal courts without taking a specified test oath as to participation in the Rebellion, was held unconstitutional.

An act of Congress allowed those persons whose property had been taken as captured and abandoned and sold, and the proceeds thereof turned into the Treasury, to claim the money and recover it by proceedings in the Court of Claims, on proof that claimants had been loyal citizens during the Civil War. The Supreme Court had decided that a pardon made proof of loyalty unnecessary. To offset the effect of this decision Congress passed an act that proof of loyalty was necessary to recovery "notwith-

standing any Executive proclamation, pardon, amnesty, or other act of condonation or oblivion." But the Supreme Court held this act unconstitutional, Justices Miller and Bradley dissenting. In the opinion Chief Justice Chase said:

> The legislature can not change the effect of such a pardon any more than the Executive can change a law. Yet this is attempted by the provision under consideration. The court is required to receive special pardons as evidence of guilt and to treat them as null and void. It is required to disregard pardons granted by proclamation on condition, though the condition has been fulfilled, and to deny them their legal effect. This certainly impairs the Executive authority and directs the court to be instrumental to that end.

U. S. *v.* Klein, 13 Wall. 148.

The power of pardon, exercised at any time, either before legal proceedings are taken, or during their pendency, or after conviction and judgment, is not subject to legislative control. Congress can neither limit the effect of a pardon nor its exercise in classes of offenders. The benign prerogative of mercy reposed in the President can not be fettered by any legislative restrictions. It has been held:

> A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense.

Ex parte Garland, 4 Wall. 380.

See also—

In re Spencer, 5 Sawyer, 195, in which Deady, D. J., comments on the effect of the above-quoted language.

Carlesi *v.* New York, 233 U. S. 51, involving the punishment of a pardoned person as a second offender.

Amnesty Granted by Congress to Witnesses

Although the pardoning power is vested in the Executive, yet it is competent for Congress to provide that a witness who is required to give testimony tending to incriminate himself shall never be prosecuted for the offense to which the testimony relates.

Brown *v.* Walker, 161 U. S. 591.

General Pardon and Amnesty

Akin to his power to reprieve and pardon, the President can also issue proclamations of amnesty, although that term does not appear in the Constitution. Amnesty is an act of sovereign power granting oblivion or a general pardon for a past offense. It is rarely, if ever, exercised in favor of single individuals, but is usually extended in behalf of certain classes of persons who are subject to trial, but who have not been convicted. Such pardon and amnesty made by a public proclamation of the President has the force of public law, of which all courts and officers must take notice, whether especially called to their atten-

tion or not, and such proclamation may be made without legislative authority or sanction.

Jenkins *v.* Collard, 145 U. S. 560.
Armstrong *v.* U. S., 13 Wall. 154.
Carlisle *v.* U. S., 16 Wall. 147.
Brown *v.* Walker, 161 U. S. 602.
See also—
Pargoud *v.* U. S., 13 Wall. 156.
U. S. *v.* Padelford, 9 Wall. 542.
U. S. *v.* Thomason, 4 Biss. (U. S.) 336.

Remission of Fines, Penalties, etc.

Except in cases of impeachment and where fines are imposed by a coordinate department of the Government for contempt of its authority, the President has the power to remit fines, penalties, etc., of every description arising under the laws of Congress.

The *Laura*, 114 U. S. 413.
Illinois Cent. R. Co. *v.* Bosworth, 133 U. S. 100.
Osborn *v.* U. S., 91 U. S. 477.

Competency of Pardoned Person as a Witness

The effect of an unconditional pardon of a person convicted of a felony is a complete restoration of his competency as a witness, notwithstanding the pardon contained the provision that it was given for such a purpose.

Boyd *v.* U. S., 142 U. S. 450.

Contempt Proceedings

A court enforcing obedience to its orders by proceedings for contempt is not executing the criminal laws of the land, but only securing to suitors the rights which it has adjudged them entitled to. This was the ancient doctrine and it has not been changed by any modern decision.

In re Debs, 158 U. S. 596.

Validity of Pardon

May be conditional.—It is competent for the President to annex to his offer of pardon any conditions or qualifications he may see fit; but after those conditions and qualifications have been satisfied, the pardon and its connected promises take full effect.

U. S. *v.* Klein, 13 Wall. 142.
Semmes *v.* U. S., 91 U. S. 21.

Necessity for delivery and acceptance of pardon.—A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. In U. S. *v.* Wilson (7 Pet. 161) the court said:

> It may then be rejected by the person to whom it is tendered; and if it be rejected, we have discovered no power in a court to force it on him. It may be supposed that no being condemned to death would reject a pardon; but the rule must be the same in capital cases and in misdemeanors.

See also—
Burdick *v.* U. S., 236 U. S. 79.
Ex parte Garland, 4 Wall. 380.

Voluntary acceptance of conditional pardon.—A conditional pardon accepted by a convict is deemed to be accepted voluntarily, and not under duress *per minas.*

Ex parte Wells, 18 How. 315.

Effect of Pardon

Penalty accruing to the United States.—A general pardon relieves from so much of a penalty of forfeiture of property as accrued to the United States.

Armstrong's Foundry, 6 Wall. 769.
Confiscation Cases, 7 Wall. 454.
U. S. *v.* Morris, 10 Wheat. 290.
Dorsheimer *v.* U. S., 7 Wall. 166.

Statute prohibiting payment of money.—An Executive pardon would relieve the person pardoned from penalties and disabilities, but could not authorize officers of the Government to pay him moneys which might be due to him if they were prohibited from doing so by a subsequent statute.

Hart's Case, 16 Ct. Cl. 459, affirmed in Hart *v.* U. S., 118 U. S. 62.

A pardon from the President to a person convicted of defrauding the Government of certain public lands, upon full restitution to the satisfaction of the Federal district attorney, gives the latter no authority to bind the Government to reimburse the accused for the value of improvements and taxes paid.

Bradford *v.* U. S., 228 U. S. 446.

Confiscated property condemned and sold.—The general pardon and amnesty granted by President Johnson, by proclamation, on the 25th of December, 1868, did not entitle one receiving the benefits thereof to the proceeds of his property, previously condemned and sold under the confiscation act of 1862, after such proceeds had been paid into the Treasury.

Knote *v.* U. S., 95 U. S. 149.
Wallach *v.* Van Riswick, 92 U S. 202.

Clause 2.—TREATIES—APPOINTMENT OF OFFICERS.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper,

in the President alone, in the Courts of Law, or in the Heads of Departments.

Treaties [1]

In General

The treaty power of the United States extends to all proper subjects of negotiation between this Government and those of other nations, and to protecting the ownership, transfer, and inheritance of property which citizens of one country may have in another. It is unlimited under the Constitution, except as to restraints found in that instrument, and except those which arise from the nature of the Government itself and as to those of the States.

Geofroy *v.* Riggs, 133 U. S. 267.

Under the treaty power, territory may be acquired and provisions made for its government and the terms fixed upon which the inhabitants of such territory will be received into the United States. The Federal Government may also provide under the treaty power for the establishment of judicial tribunals in foreign countries for the benefit of its own citizens.

Downes *v.* Bidwell, 182 U. S. 279.
Dorr *v.* U. S., 195 U. S. 140.
In re Ross, 140 U. S. 463.
See also—
American Ins. Co. *v.* Canter, 1 Pet. 511.
Pollard *v.* Kibbe, 14 Pet. 392.
Wilson *v.* Shaw, 204 U. S. 24.
De Lima *v.* Bidwell, 182 U. S. 1.
Goetze *v.* U. S., 103 Fed. 72; judgment reversed in 182 U. S. 221.

A treaty is, in its nature, a contract, not a legislative act. It is equivalent to an act of the legislature whenever it operates without the aid of any legislative provision.

Foster *v.* Neilson, 2 Pet. 253.

For the infraction of the provisions of a treaty, a remedy must be sought by the injured party through reclamations upon the other.

Whitney *v.* Robertson, 124 U. S. 190.

A treaty made with a sovereign inures to his successors. War may suspend the operations of a treaty. The establishment of boundaries may be accomplished by treaty, but the terms of a treaty can not transcend the Constitution. A treaty can not deprive Congress of any part of its legislative power; and while a treaty may supersede an act of Congress, a treaty may be abrogated by a later act, and when the repugnancy between a treaty and a later act of Congress is clear the former must yield, and the courts are bound to follow the later act; but the courts should

[1] See same subject, pp. 269, 442, 543, and 549.

not construe an act of Congress as modifying or annuling a treaty unless its words clearly point to such a construction.

The *Sapphire*, 11 Wall. 168.
Society, etc., *v.* New Haven, 8 Wheat. 494.
U. S. *v.* Texas, 162 U. S. 1.
Cherokee Tobacco, 11 Wall. 621.
Ware *v.* Hylton, 3 Dall. 199.
Botiller *v.* Dominguez, 130 U. S. 247.
Lem Moon Sing *v.* U. S., 158 U. S. 549.
See also—
Scott *v.* Sandford, 19 How. 629.
Horner *v.* U. S., 143 U. S. 578.
Thomas *v.* Gay, 169 U. S. 270.
Stephens *v.* Cherokee Nation, 174 U. S. 483.
U. S. *v.* Lee Yen Tai, 185 U. S. 220.
Whitney *v.* Robertson, 124 U. S. 194.
Fong Yue Ting *v.* U. S., 149 U. S. 720.
La Abra Min. Co. *v.* U. S., 175 U. S. 460.
Lattimer *v.* Poteet, 14 Pet. 14.

Need of Legislation to Give Effect to Treaties

Treaties made between the United States and foreign powers often contain special provisions which do not execute themselves but require the interposition of Congress to carry them into effect, and Congress has constantly in such cases legislated on the subject; yet although the power is given to the Executive, with the consent of the Senate, to make treaties, the power is nowhere in positive terms conferred upon Congress to make laws to carry the stipulations of treaties into effect; it has been supposed to result from the duty of the National Government to fulfill all the obligations of treaties.

Prigg *v.* Pennsylvania, 16 Pet. 619.

Advice and Consent of the Senate

A treaty must contain the whole contract between the parties, and the power of the Senate is limited to a ratification of such terms as have already been agreed upon between the President, acting for the United States, and the commissioners of the other contracting power. The Senate may refuse its ratification or make it conditional upon the adoption of amendments to the treaty.

Fourteen Diamond Rings *v.* U. S., 183 U. S 183 (concurring opinion of Brown, J.).
See also—
New York Indians *v.* U. S., 170 U. S. 23.

Extent of Treaty-Making Power

Over foreign extradition.—The power to make treaties is given by the Constitution in general terms, without any description of the objects intended to be embraced by it, and, consequently, it was designed to include all those subjects which in the ordinary intercourse of nations had usually been made subjects of negotiation and treaty, and which are consistent with the nature of our institutions and the distribution of powers between the General and State Governments. And without attempting to

define the exact limits of this treaty-making power or to enumerate the subjects intended to be included in it, it may safely be assumed that the recognition and enforcement of the principles of public law, being one of the ordinary subjects of treaties, were necessarily included in the power conferred on the General Government. And as the rights and duties of nations toward one another in relation to fugitives from justice are a part of the law of nations, and have always been treated as such by the writers upon public law, it follows that the treaty-making power must have authority to decide how far the right of a foreign nation in this respect will be recognized and enforced when it demands the surrender of anyone charged with offenses against it.

Holmes *v.* Jennison, 14 Pet. 569.

Extent of judicial inquiry.—It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time. For while of course a man is not to be sent from the country merely upon demand or surmise, yet if there is presented, even in somewhat untechnical form, according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender. We are bound by the existence of an extradition treaty to assume that the trial will be fair.

Glucksman *v.* Henkel, 221 U. S. 508.
Grin *v.* Shine, 187 U. S. 181.
Pierce *v.* Creecy, 210 U. S. 387.

Prosecution for another offense.—When a person has been surrendered by a foreign country, he can not be proceeded against for an offense for which he was not extradited and for which under the treaty his surrender could not have been demanded.

U. S. *v.* Rauscher, 119 U. S. 407.

But without giving a person an opportunity to return to the country of his asylum, he may be prosecuted for another offense committed after his surrender.

Collins *v.* Johnston, 237 U. S. 502.
Collins *v.* O'Neil, 214 U. S. 113.

To abolish disabilities of aliens.—The residence of citizens of one country within the territory of another, and the removal of their disability from alienage to hold, transfer, and inherit property, are proper subjects of treaty arrangement.

Geofroy *v.* Riggs, 133 U. S. 266.
U. S. *v.* Whiskey, 93 U. S. 197.
Chirac *v.* Chirac, 2 Wheat. 259.
Hauenstein *v.* Lynham, 100 U. S. 483.

The treaty-making power extends to all proper subjects of negotiation between our Government and foreign nations, including that of promoting friendly relations by establishing rules of equality between foreign subjects while here and native

citizens. A rule of equality thus established stands on the same footing of supremacy as the Federal Constitution and laws, can not be rendered nugatory in any part of the United States by municipal ordinances or State laws, operates without the aid of legislation, State or national, and is to be applied and given authoritative effect by the courts. A treaty is to be liberally construed; when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred.

Asakura *v.* Seattle, 265 U. S. 332.

In absence of treaty, capacity to inherit land within a State depends upon law of that State.

Sullivan *v.* Kidd, 254 U. S. 433.

So far as treaty provisions can become subjects of judicial cognizance in the courts, they are subject to such acts as Congress may pass for their enforcement, modification, or repeal; but Congress can not organize boards of revision to annul titles confirmed under a public treaty. The abrogation of a treaty can not affect property rights already vested under it.

Head Money Cases, 112 U. S. 599.
Reichart *v.* Felps, 6 Wall. 165.
Chirac *v.* Chirac, 2 Wheat. 277.
Chinese Exclusion Case, 130 U. S. 602.

With the Indian tribes.—The power to make treaties with the Indian tribes is coextensive with the power to make treaties with foreign nations.

U. S. *v.* Whiskey, 93 U. S. 197.
See also—
Dick *v.* U. S., 208 U. S. 340.
Holden *v.* Joy, 17 Wall. 242.
Ex parte Crow Dog, 109 U. S. 567.
Lone Wolf *v.* Hitchcock, 187 U. S. 553.
Conley *v.* Ballinger, 216 U. S. 84.

The setting apart by treaty with the Indians of the lands for their occupancy is of itself a withdrawal of their character as public lands.

Missouri, etc., R. Co. *v.* Roberts, 152 U. S. 114.
See also—
New York Indians *v.* U. S., 170 U. S. 1.
Jones *v.* Meehan, 175 U. S. 1.
Francis *v.* Francis, 203 U. S. 233.
Chase *v.* U. S., 256 U. S. 1.
Gilpin *v.* U. S., 256 U. S. 10.

Appointment of Officers

In General

The Constitution for purposes of appointment very clearly divides all its officers into two classes. The primary class requires a nomination by the President and confirmation by the Senate. But foreseeing that when officers became numerous, and sudden removals necessary, this mode might be inconvenient, it was provided that, in regard to officers inferior to those spe-

cially mentioned, Congress might by law vest their appointment "in the President alone, in the courts of law, or in the heads of departments."

U. S. *v.* Germaine, 99 U. S. 509.

"He shall nominate" means to recommend in writing; in this form the advice of the Senate is asked. "Nominating" and "appointing" are distinct acts from commissioning; when the appointing power has done everything to be performed by him the appointment is complete. Officers whose duties are extended by Congress need not be again nominated and appointed. The President can not make a temporary appointment during a recess, if the Senate was in session when or since the vacancy occurred.

Marbury *v.* Madison, 1 Cranch 154.
Shoemaker *v.* U. S., 147 U. S. 301.
Case of District Attorney, 16 Am. Law. Reg. 786.
Seaman *v.* Northwestern Mut. Life, 86 Fed. 497.
U. S. *v.* Kirkpatrick, 9 Wheat. 734.

The delivery of the commission is not necessary to complete an appointment; the commission is merely evidence of the appointee's title and not necessary to its vestiture. Once issued, the commission is conclusive evidence of appointment as against the appointing power. When the appointment to an office is complete, it is irrevocable whether the commission has been delivered or not.

Marbury *v.* Madison, 1 Cranch 154–162.

Ambassadors, Public Ministers, and Consuls

The claim that Congress is without power to vest in the President the appointment of a subordinate officer called a vice consul, to be charged with the duty of temporarily performing the functions of the consular office, disregards both the letter and spirit of the Constitution. Although the Constitution requires that consuls be appointed by the President, "by and with the advice and consent of the Senate," the word "consul" therein does not embrace a subordinate officer like that of vice consul. The appointment of such an officer is within the grant of power expressed in the same section, thus: "but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."

U. S. *v.* Eaton, 169 U. S. 343.

Power of Congress

In general.—Appointments to office can only be made by the Executive in the manner provided and not by congressional enactment, and Congress can not by law designate the person to fill an office; but Congress may authorize a particular officer to perform a particular duty or may extend the duties of officers, and Congress may retire an officer or may change his rank on the active or retired list without conflicting with this clause. The

Constitution does not allow Congress to vest the appointment of inferior officers elsewhere than in the President alone, in courts of law, or in the heads of departments, but when Congress does vest the power in any of these agencies it may restrict the power of removal.

Wood's Case, 15 Ct. Cl. 151; affirmed in 107 U. S. 414.
U. S. *v.* Ferreira, 13 How. 40.
Kentucky *v.* Dennison, 24 How. 108.
Shoemaker *v.* U. S., 147 U. S. 301.
Ekiu *v.* U. S., 142 U. S. 663.
U. S. *v.* Perkins, 116 U. S. 485.

The civil service law never contemplated any interference with the President's power of removal.

Flemming *v.* Stahl, 83 Fed. 940.

To prescribe qualifications and conditions.—Appointees must comply with conditions prescribed by statute.

U. S. *v.* Le Baron, 19 How. 78.

To vest appointments "in the heads of departments."—The Congress may by law vest the appointment of such inferior officers as they may think proper in the President alone, in the courts of law, or in the heads of departments.

U. S. *v.* Germaine, 99 U. S. 511.
U. S. *v.* Hartwell, 6 Wall. 393.

To vest appointments "in the courts of law."—Congress had the right to invest the District of Columbia courts with the power of appointing commissioners.

Rice *v.* Ames, 180 U. S. 378.

Selection of appointing power in discretion of Congress.—It is no doubt usual and proper to vest the appointment of inferior officers in that particular department to which the duties of such officers appertain, but there is no absolute requirement to this effect in the Constitution.

Ex parte Siebold, 100 U. S. 397.
Matter of Hennen, 13 Pet. 258.

By and With the Advice and Consent of the Senate

The dismissal of an officer of the Army by the President creates a vacancy which can be filled only by a new and original appointment, to which, by the Constitution, the advice and consent of the Senate are necessary, unless the vacancy occurs in the recess of that body, in which case the President can grant a commission to expire at the end of its next succeeding session.

U. S. *v.* Corson, 114 U. S. 619.

When a resignation has been accepted the officer ceases to hold the office, and nothing can reinstate him short of a new nomination and confirmation.

Mimmack *v.* U. S., 97 U. S. 437.

Who Are Officers of the United States

Unless a person in the service of the Government holds his place by virtue of an appointment by the President or of one

of the courts of justice or heads of departments authorized by law to make such an appointment, he is not, strictly speaking, an officer of the United States.

U. S. *v.* Mouat, 124 U. S. 307.
U. S. *v.* Smith, 124 U. S. 532.
Lamar *v.* U. S., 240 U. S. 60.
But see—
Lamar *v.* U. S., 241 U. S. 103, holding that a Member of Congress is an officer of the United States within the meaning of sec. 32 of the Penal Code.

A surgeon appointed by the Commissioner of Pensions is not an officer within the meaning of this clause.

U. S. *v.* Germaine, 99 U. S. 512.

A merchant appraiser selected in accordance with the provisions of a customs act and Treasury regulations adopted thereunder upon the request of an importer for a reappraisal is not an officer of the United States within the meaning of this clause.

Auffmordt *v.* Hedden, 137 U. S. 326.

Clerks appointed by a collector of customs are not officers of the United States.

U. S. *v.* Smith, 124 U. S. 532.

Antedating Appointments

The Executive, by antedating the commission of a public officer without legislative authority can not create a liability on the part of the United States to pay him a salary for the time he was not in the service; but Congress, the legislative branch of the Government, may by law create such liability, and may allow back pay to any officer in consideration of past services or for any other cause which it deems sufficient.

Collins's Case, 15 Ct. Cl. 22.
Bennett *v.* U. S., 19 Ct. Cl. 379.

Courts Have No Supervising Power

The fitness of the appointee must be determined by the appointing power; it is one of those acts over which the courts have no general supervising power.

Keim *v.* U. S., 177 U. S. 293.

No Vested Right in an Office

An officer appointed for a definite time or during good behavior has not any vested interest or contract right in his office of which Congress can not deprive him. Whatever the form of the statute, the officer under it does not hold by contract, but enjoys a privilege revocable by the sovereignty at will; and one legislature can not deprive its successor of the power of revocation.

Crenshaw *v.* U. S., 134 U. S. 104.

Power of Removal

In general.—In the absence of constitutional or statutory provision the President can by virtue of his general power of appoint-

ment remove an officer, even though appointed by and with the advice and consent of the Senate. To take away this power of removal in relation to an inferior office created by statute, although that statute provided for an appointment thereto by the President and confirmation by the Senate, would require very clear and expressive language. It should not be held to be taken away by mere inference or implication.

Shurtleff *v.* U. S., 189 U. S. 314.
Ex parte Hennen, 13 Pet. 258.
Parsons *v.* U. S., 167 U. S. 335.

A general power to remove officers carries the right to remove at any time or in any manner deemed best, with or without previous notice, and where an officer is removed without notice it will be presumed that the removal was for a cause other than those specified by Congress and which carry the right to notice. Where the power to remove an officer is discretionary the courts will not inquire as to the grounds for a removal.

Eckloff *v.* District of Columbia, 135 U. S. 241.
Nicholas *v.* U. S., 257 U. S. 71.
Norris *v.* U. S., 257 U. S. 77.
Eberlein *v.* U. S., 257 U. S. 82.
Wallace *v.* U. S., 257 U. S. 541.

In connection with the President's power summarily to dismiss officers from the military and naval service in time of war, see McElrath *v.* U. S. (102 U. S. 426), holding that the Civil War ended on August 20, 1866.

See also—
The *Protector*, 12 Wall. 700.

As incident to the power of appointment.—In the absence of specific provision to the contrary, the power of removal from office is incident to the power of appointment.

Keim *v.* U. S., 177 U. S. 293.

Effected by appointment of another.—The President, by and with the advice and consent of the Senate, has the power to displace an officer by the appointment of another in his place.

Blake *v.* U. S., 103 U. S. 227.
Quackenbush *v.* U. S., 177 U. S. 25.

Removal of inferior officers.—When Congress by law vests the appointment of inferior officers in the heads of departments, it may limit and restrict the power of removal as it deems best for the public interest. The head of a department has no constitutional prerogative of appointment to offices independently of the legislation of Congress, and by such legislation he must be governed, not only in making appointments, but in all that is incident thereto.

U. S. *v.* Perkins, 116 U. S. 483.

These cases must be considered as establishing the principle that the President, at his pleasure, can remove an officer other

than a judge, and is under no obligation to assign a reason for doing so. This doctrine is a long distance from the opinion of Hamilton, and of Madison, when the latter said "that a wanton removal of an officer by the President without just cause would be grounds for impeaching and removing the President." But that was at the very beginning of the Republic, and the doctrine which we have been discussing is one of the evolutions of the Constitution in the progress of the country; and while the conclusion of the courts vastly increases the influence of the Executive and confers power upon him far beyond the express contemplation of the Constitution, and contrasts strangely with the teachings of the fathers of the Republic, it would be difficult to show that it was not correct. Unless the power to remove an officer other than a Federal judge is lodged somewhere he would necessarily hold for life, and nothing could be more repugnant to the Constitution, or to the spirit of our Republic and our institutions, than this. The misfortune is that the Constitution does not determine who shall remove officers. But the doctrine that the removal of an officer is incident to his appointment is no more violent than the doctrine that an officer once appointed could never be removed, and the question seemed ultimately to come to this, and it was between these two conclusions that the court was to decide.

On principle the President can not create a vacancy by removing the occupant of an office for the purpose of filling it, but if he chose to do so it would be difficult to challenge his motive or prove his purpose. (Watson on the Constitution, vol. 2, p. 987.)

Clause 3.—RECESS APPOINTMENTS.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

This clause confers upon the President the power to make temporary appointments, or what are called "recess appointments." Such appointments can not be made unless a vacancy actually exists. An office newly created which had not been filled is not a vacancy within this provision.

In Peck *v.* U. S. (39 Ct. Cl., 125) it was said by Justice Peelle:

> The language of the Constitution, "to fill up all vacancies that may happen during the recess of the Senate," necessarily implies not only the previous existence of an office but that "during the recess of the Senate" a vacancy happened therein which could be filled by the President by commission to expire at the end of the next session of Congress. (P. 136.)

In In re Farrow (3 Fed. 112) it was held that "vacancies that may happen during the recess of the Senate" are equivalent to "vacancies that may happen to *exist* during the recess of the Senate."

The power conferred by this clause is not confined to vacancies which may happen in offices created by law. An office becomes vacant when the incumbent, having tendered his resignation, receives notice from the proper authorities that the same has been accepted. An act making it unlawful for a person to hold more than one office does not create a vacancy in either until the incumbent elects which to retain. The commission of an officer appointed during a recess, and afterwards nominated and rejected, continues in force until the next session. If the Senate concur, it is a new appointment and a new bond will be required. Whenever an applicant appears with a commission signed by the President appointing him a marshal to fill a vacancy created during a recess, it is the duty of the district judge to take his bond and administer the oath, regardless of any question of the President's power.

U. S. *v.* Maurice, 2 Brock. 96.
Mimmack *v.* U. S., 97 U. S. 437.
U S. *v.* Harsha, 172 U. S. 572.
U. S. *v.* Kirkpatrick, 9 Wheat. 733.

In August, 1898, the Senate being in recess, the President sought to advance Commodore Schley to be a rear admiral, for "eminent and conspicuous conduct in battle." Supposing that a vacancy was thereby caused in the grade of commodore, the President advanced Captain Higginson to the grade of commodore, and other officers to fill supposed vacancies, until the claimant, a lieutenant, was advanced to the grade of lieutenant commander. The officers so advanced were recognized by the departments and paid accordingly. In December, the Senate being in session, the nomination of Commodore Schley was not acted upon, but the promotions of other officers under him were confirmed, including the claimant, whom the President commissioned. Subsequently it was held by the accounting officers that there were no vacancies to which these officers could be appointed, and the overpayments to them were deducted. The ruling of the accounting officers was correct, as the language of the Constitution necessarily implies, not only the previous existence of an office, but that "during the recess of the Senate" a vacancy happened in such office which could be filled by the President by commission to expire at the end of the next session of the Congress.

Peck *v.* U. S., 39 Ct. Cl. 125.

Section 3.—MISCELLANEOUS POWERS AND DUTIES.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Shall Take Care that the Laws Be Faithfully Executed

In General

This duty of the President is not limited to the enforcement of acts of Congress or of statutes of the United States according to their expressed terms, but includes the rights, duties, and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the Government under the Constitution.

In re Neagle (135 U. S. 64), in which case it was held that it is within the power of the President to take measures for the protection of a judge of one of the courts of the United States who, while in the discharge of the duties of his office, is threatened with a personal attack which may probably result in his death, and where this protection is to be afforded through civil power the department of justice is the proper one to set in motion the necessary means of protection.

No Power to Forbid Their Execution

The obligation imposed on the President to see the laws faithfully executed does not imply a power to forbid their execution, and the Postmaster General can not justify a failure to perform a duty imposed upon him by law on the ground that he is alone subject to the direction and control of the President.

Kendall *v.* U. S. 12 Pet. 524.

Shall Commission All the Officers

When a commission has been signed by the President the appointment is made and the commission is complete when the seal of the United States has been affixed to it by the Secretary of State.

Marbury *v.* Madison, 1 Cranch 162.
U. S. *v.* Le Baron, 19 How. 79.

The justices of the Supreme Court may hold circuit courts without having distinct commissions for that purpose.

Stuart *v.* Laird, 1 Cranch 299.

Sec. 3.—Miscellaneous Powers and Duties.

The discretionary powers of the President are beyond judicial control.

Mississippi *v.* Johnson, 4 Wall. 500.
Gaines *v.* Thompson, 7 Wall. 353.
In re Kaine, 14 How. 119.
Prize Cases, 2 Black 635.
Bartlett *v.* Kane, 16 How. 272.
Board of Liquidation *v.* McComb, 92 U. S. 531.
Craig *v.* Leitensdorfer, 123 U. S. 189.
Chinese Exclusion Case, 130 U. S. 602.
Quackenbush *v.* U. S., 177 U. S. 25.
Keim *v.* U. S., 177 U. S. 290.
Georgia *v.* Stanton, 6 Wall. 50.
In re Baiz, 135 U. S. 403.

On the question of whether or not the President is subject to legal process, Chief Justice Marshall said in Burr's trial (vol. 1, p. 182):

That the President of the United States may be subpœnaed and examined as a witness and required to produce any paper in his possession is not controverted. The President, although subject to the general rules which apply to others, may have sufficient motives for declining to produce a particular paper, and those motives may be such as to restrain the court from enforcing its production. The guard furnished to this high officer to protect him from being harassed by vexatious and unnecessary subpœnas is to be looked for in the conduct of the court after these subpœnas have been issued, not in any circumstances which is to precede their being issued * * *. The court can conceive no objection to a subpœna *duces tecum* to any person whatever, provided the case be such as to justify the process.

The executive power is vested in a President; and so far as his powers are derived from the Constitution, he is beyond the reach of any other department, except in the mode prescribed by the Constitution through the impeaching power.

Kendall *v.* U. S., 12 Pet. 610.
Mississippi *v.* Johnson, 4 Wall. 483.

Section 4.—IMPEACHMENTS.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

In Article I, section 2, clause 5, of the Constitution, it is provided that "The House of Representatives shall * * * have the sole power of impeachment," and in Article I, section 3, clause 6, it is provided that "The Senate shall have the sole power to try all impeachments * * *. When the President of the United States is tried, the Chief Justice shall preside."

This section does not prevent the removal of such officers for other causes deemed sufficient by the President.

Shurtleff *v.* U. S., 189 U. S. 311.

A Member of Congress is not an officer of the Government within the meaning of this section.

17 Op. Atty. Gen. 419.

ARTICLE III

JUDICIAL DEPARTMENT

ARTICLE III—JUDICIAL DEPARTMENT.

Section 1.—DISTRIBUTION OF JUDICIAL POWER—JUDGES.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Leading Cases

Constitutional Grant of Jurisdiction

Osborn *v.* Bank, 9 Wheat. 738.
Pacific Railroad Removal Cases, 115 U. S. 1.
Southern Pac. Co. *v.* California, 118 U. S. 109.
Bock *v.* Perkins, 139 U. S. 628.
Bors *v.* Preston, 111 U. S. 252.
Waring *v.* Clarke, 5 How. 441.
Genesee Chief v. Fitzhugh, 12 How. 443.
The Steamboat *Magnolia*, 20 How. 296.
Ex parte Boyer, 109 U. S. 629.
Manchester *v.* Massachusetts, 139 U. S. 240.
The *Moses Taylor*, 4 Wall. 411.
Leon *v.* Galceran, 11 Wall. 185.
Stanley *v.* Schwalby, 162 U. S. 255.
U. S. *v.* Texas, 143 U. S. 621.
Ames *v.* Kansas, 111 U. S. 449.
Wisconsin *v.* Pelican Ins. Co., 127 U. S. 265.
Hans *v.* Louisiana, 134 U. S. 1.
South Dakota *v.* North Carolina, 192 U. S. 286.
Railroad Company *v.* Tennessee, 101 U. S. 337.
U. S. *v.* Lee, 106 U. S. 196.
Cunningham *v.* Macon, etc., R. Co., 109 U. S. 446.
Hooe *v.* Jamieson, 166 U. S. 395.
Ohio, etc., R. Co. *v.* Wheeler, 1 Black 286.
St. Louis, etc., R. Co. *v.* James, 161 U. S. 545.

Exercise of Jurisdiction

Osborn *v.* Bank, 9 Wheat. 738.
Bors *v.* Preston, 111 U. S. 252.
U. S. *v.* Texas, 143 U. S. 621.
Ames *v.* Kansas, 111 U. S. 449.
Wisconsin *v.* Pelican Ins. Co., 127 U. S. 265.
Ex parte Vallandigham, 1 Wall. 243.
Martin *v.* Hunter, 1 Wheat. 304.
Marbury *v.* Madison, 1 Cranch 137.
Gaines *v.* Fuentes, 92 U. S. 10.
Tennessee *v.* Davis, 100 U. S. 257.
Security Mut. Life Ins. Co. *v.* Prewitt, 202 U. S. 246.

Whitten *v.* Tomlinson, 160 U. S. 231.
Robertson *v.* Baldwin, 165 U. S. 275.
Riggs *v.* Johnson County, 6 Wall. 166.

The Law Administered

Green *v.* Neal, 6 Pet. 291.
Swift *v.* Tyson, 16 Pet. 1.
Pana *v.* Bowler, 107 U. S. 529.
Gelpcke *v.* Dubuque, 1 Wall. 175.
Burgess *v.* Seligman, 107 U. S. 20.
Bucher *v.* Cheshire R. Co., 125 U. S. 555.
Smith *v.* Alabama, 124 U. S. 465.

The Power in General

The object of this section was to provide for the establishment of a judiciary of the United States as a department of the Government, independent in its own sphere, and having no authority to encroach on the powers granted to the other departments. The declaration in the Constitution that judicial power shall be vested in certain courts is equivalent to a provision that no judicial power is vested in Congress, except in the cases specifically enumerated. On the other hand, neither the executive department nor the legislative department can be restricted by the judicial, though the acts of both, when performed, are in proper cases subject to its cognizance. The judiciary can only inquire whether the means devised by Congress, in the execution of a power, are forbidden by the Constitution; the courts can not inquire, of their own motion, as to the validity of action taken by the other departments in the exercise of their powers; the question must arise in a case involving the rights of actual litigants.

Chisholm *v.* Georgia, 2 Dall. 432.
Marbury *v.* Madison, 1 Cranch 176.
Kilbourn *v.* Thompson, 103 U. S. 192.
Bartlett *v.* Kane, 16 How. 272.
I. C. C. *v.* Brimson, 154 U. S. 447.
Quackenbush *v.* U. S., 177 U. S. 25.
Clough *v.* Curtis, 134 U. S. 372.
See also—
Osborn *v.* Bank, 9 Wheat. 819.
Mississippi *v.* Johnson, 4 Wall. 500.
Veazie Bank *v.* Fenno, 8 Wall. 548.
Georgia *v.* Stanton, 6 Wall. 50.
Loan Asso. *v.* Topeka, 20 Wall. 669.
Board of Liquidation *v.* McComb, 92 U. S. 541.
Craig *v.* Leitensdorfer, 123 U. S. 211.
U. S. *v.* Bashaw, 152 U. S. 443.
Keim *v.* U. S. 177 U. S. 292.

Every trial involves the exercise of judicial power, judicial power being that power with which courts are clothed for the purpose of the trial and determination of causes, the power to hear and determine the subject matter in controversy between the parties to a suit and render a judgment or decree. It is not sufficient to bring a matter under the judicial power that it involves the exercise of judgment upon law and facts; e. g., matters submitted to commissioners or heads of departments for

decision according to their discretion. The power to hear and pass upon the validity of a claim in an *ex parte* proceeding is not a judicial power. An administrative duty may, however, involve the exercise of judicial power in an enlarged sense, as where the performance of it involves inquiry into the existence of facts, and the application to them of rules of law; but it does not involve the exercise of judicial power as here understood:

Ex parte Milligan, 4 Wall. 121.
U. S. *v.* Arredondo, 6 Pet. 709.
Rhode Island *v.* Massachusetts, 12 Pet. 718.
U. S. *v.* Ferreira, 13 How. 47.
In re Kaine, 14 How. 120.
Murray *v.* Hoboken Land, etc., Co., 18 How. 280.
See also—
Riggs *v.* Johnson County, 6 Wall. 187.
Ex parte Vallandigham, 1 Wall. 253.
In re Sanborn, 148 U. S. 224.
U. S. *v.* Todd, 13 How. 52, note.
Muskrat *v.* U. S., 219 U. S. 346.
Pacific States Tel. Co. *v.* Oregon, 223 U. S. 118, holding that whether a State Government has ceased to be republican in form because of the adoption of the initiative and referendum is not a judicial, but a political question, and discussing Luther *v.* Borden, 7 How. 1, and Taylor *v.* Beckham, 178 U. S. 548.[1]

Political or Legislative Questions

Upon political questions the courts are bound to follow the decision of the political departments of the Government; that is, the question as to the existence of peace or war; as to the existence of tribal relations; as to the public character of a person claiming to be a foreign minister; as to the existence of a treaty; as to whether a foreign power has become an independent State; as to boundaries between the United States and another nation; as to the admission or exclusion of aliens.

Marbury *v.* Madison, 1 Cranch 169.
Luther *v.* Borden, 7 How. 42.
U. S. *v.* Holliday, 3 Wall. 419.
U. S. *v.* Anderson, 9 Wall. 56.
In re Baiz, 135 U. S. 403.
Terlinden *v.* Ames, 184 U. S. 288.
De La Croix *v.* Chamberlain, 12 Wheat. 599.
Ekiu *v.* U. S., 142 U. S. 660.
See also—
Foster *v.* Neilson, 2 Pet. 307.
U. S. *v.* Lee, 106 U. S. 209.
Craig *v.* Missouri, 4 Pet. 438.
Cherokee Nation *v.* Georgia, 5 Pet. 20.
Keely *v.* Sanders, 99 U. S. 446.
U. S. *v.* Palmer, 3 Wheat. 634.
The *Divana Pastora*, 4 Wheat. 63.
The *Santissima Trinidad*, 7 Wheat. 283.
U. S. *v.* Yorba, 1 Wall. 423.
U. S. *v.* Arredondo, 6 Pet. 711.
U. S. *v.* Reynes, 9 How. 154.

[1] See also Amendments 18 and 19, pp. 747 and 757.

Sec. 1.—Distribution of Judicial Power—Political or Legislative Questions.

Fong Yue Ting *v.* U. S., 149 U. S. 712.
Oetjen *v.* Central Leather Co., 246 U. S. 297.
Ricaud *v.* American Metal Co., 246 U. S. 304.

The action of the political departments of the Government in reserving the whole tract comprising the Fort Leavenworth Military Reservation for military purposes is conclusive upon the courts as to the character of the occupation, and they can not inquire, for the purpose of determining jurisdiction in criminal cases, whether the place of the crime was then in actual use for military purposes.

Benson *v.* U. S., 146 U. S. 325.

The decision of Congress recognizing a claim as an equitable obligation of the Government, and appropriating money for its payment, can rarely if ever be the subject of review by the judicial branch.

U. S. *v.* Realty Co., 163 U. S. 427.

A Federal court has no jurisdiction of a suit in equity to compel a State board of registrars to enroll the names of negroes on voting lists.

Giles *v.* Harris, 189 U. S. 475.

In a suit brought in this court by a State, against the Federal officials charged with the administration of an act of Congress, to enjoin them from enforcing it, wherein the plaintiff averred that the act is unconstitutional, it was held that as the statute does not require the plaintiff to do or yield anything, and as no burden is imposed by it other than that of taxation, which falls, not on the State but on her inhabitants, who are within the Federal, as well as the State, taxing power, the complaint resolves down to the naked contention that Congress has usurped reserved powers of the States by the mere enactment of the statute—an abstract question of political power, not a matter of judicial cognizance.

Massachusetts *v.* Mellon, 262 U. S. 447.

Foreign Relations and Treaties

It is the exclusive right of governments to recognize new States arising in the revolutions of the world, and until such recognition, either by this Government or the Government to which the new State belonged, courts must consider the former situation as remaining.

Rose *v.* Himely, 4 Cranch 241.
Gelston *v.* Hoyt, 3 Wheat. 324.
See also—
The *Richmond v.* U. S., 9 Cranch 102.
Williams *v.* Suffolk Ins. Co., 13 Pet. 415.
Kennett *v.* Chambers, 14 How. 38.
Jones *v.* U. S., 137 U. S., 202.
La Abra Mining Co. *v.* U. S., 175 U. S. 423.
Neely *v.* Henkel, 180 U. S. 109.
The *Lusitania*, 251 Fed. 715.

Sec. 1.—Distribution of Judicial Power—Unconstitutional Legislation.

Power of United States Courts to Declare Acts of Congress Unconstitutional[1]

On this subject Chief Justice Marshall, in Marbury *v.* Madison (1 Cranch 137), said that it was of the very essence of judicial duty for the courts to say what the law is, and that in a particular case to which both the law and the Constitution apply the courts must regard the Constitution as superior to any act of the legislature and decide the case conformable to the Constitution, disregarding the law. Cooley, in his "Constitutional Limitations" (p. 192, 6th Ed.), says:

> Being required to declare what the law is in the cases which come before them, they must enforce the Constitution as the paramount law, whenever the legislative enactment comes in conflict with it.

In Mayor *v.* Cooper (6 Wall. 251) the court said:

> This court has the power to declare an act of Congress to be repugnant to the Constitution, and therefore invalid. But the duty is one of great delicacy and only to be performed where the repugnancy is clear and the conflict irreconcilable. Every doubt is to be resolved in favor of the constitutionality of the law.

The courts can not inquire as to the motive prompting the acts of the other departments of Government; their knowledge and good faith are not open to question. Nor can the expediency or wisdom of those acts be questioned by the courts.

Fletcher *v.* Peck, 6 Cranch 131.
U. S. *v.* Des Moines, etc., R. Co., 142 U. S. 544.
Wilkes *v.* Dinsman, 7 How. 127.
See also—
Ex parte McCardle, 7 Wall. 514.
Soon Hing *v.* Crowley, 113 U. S. 710.
Angle *v.* Chicago, etc., R. Co., 151 U. S. 18.
Scott *v.* Sandford, 19 How. 405.
U. S. *v.* Union Pac. R. Co., 91 U. S. 91.
County of Livingston *v.* Darlington, 101 U. S. 416.
Brass *v.* Stoeser, 153 U. S. 403.
Li Sing *v.* U. S., 180 U. S. 495.
Treat *v.* White, 181 U. S. 269.

In Adkins *v.* Children's Hospital, 261 U. S. 525, the court said that every possible presumption stands in favor of an act of Congress until overcome beyond rational doubt.

Duty of Judiciary to Construe Statutes

The Constitution imposes upon the judicial department the solemn duty of interpreting the laws; and however disagreeable that duty may be, in cases where its own judgment shall differ from that of other high functionaries it is not at liberty to surrender or to waive it.

U. S. *v.* Dickson, 15 Pet. 162.
Muskrat *v.* U. S., 219 U. S. 346
U. S. *v.* Freund, 290 Fed. 411.

It is the duty of the courts to interpret and enforce the statutes, not to inquire into the underlying policy, or their reasons or

[1] See also "Constitutional Questions," p. 421, and "Acts of Congress Declared Unconstitutional by the Supreme Court," p. 759.

effect when enforced, the remedy for unsound statute being with the legislature.

Empire Fuel Co. *v.* Hays, 295 Fed. 704.
Ohio Collieries Co. *v.* Stuart, 290 Fed. 1005.

Power to construe is a necessary incident of power to determine constitutionality.

Heald *v.* District of Columbia, 254 U. S. 20.

The judicial power covers every legislative act of Congress, whether it be made within the limits of its delegated powers or be an assumption of power beyond the grants in the Constitution.

Ableman *v.* Booth, 21 How. 520.
See also—
Powell *v.* Pennsylvania, 127 U. S. 686.
Gordon *v.* U. S., 117 U. S. 705.
Cooper *v.* Telfair, 4 Dall. 14.
Chicago, etc., R. Co. *v.* Wellman, 143 U. S. 345.
Close *v.* Glenwood Cemetery, 107 U. S. 475.
U. S. *v.* Harris, 106 U. S. 635.
Trade-mark Cases, 100 U. S. 96.
Hylton *v.* U. S., 3 Dall. 175.

Validity of State Statutes Under State Constitution

The Supreme Court of the United States "has no jurisdiction to determine that any law of any State legislature contrary to the constitution of such State is void."

Calder v. Bull, 3 Dall. 392.
Colorado Power Co. *v.* Halderman, 295 Fed. 178.

Must Have Power to Render Judgment

The Supreme Court has no jurisdiction in any case where it can not render judgment in the legal sense of the term and when it depends upon the legislature to carry its opinion into effect or not at the pleasure of Congress.

Gordon *v.* U. S., 117 U. S. 704.

Power to Punish for Contempt

The power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court.

In re Debs, 158 U. S. 594.

No Supervising Power Over Administrative Departments

The courts have no general supervising power over the proceedings and action of the various administrative departments of Government.

Keim v. U. S., 177 U. S. 293.
Georgia *v.* Stanton, 6 Wall 71.
I. C. C. *v.* Illinois Cent. R. Co., 215 U. S. 452.

Limits of the Judicial Power

The Constitution defines the limits of the judicial power, but Congress prescribes how much of it is to be exercised by the inferior Federal courts. The judicial power remains dormant until some act of Congress shall call it into action by designating the particular tribunal or tribunals which shall be authorized

to exercise it, and except in cases specially enumerated in the Constitution, the distribution of this power is entirely within the control of Congress. In certain instances the power may be withdrawn by Congress, even in pending cases.

Turner *v.* Bank, 4 Dall. 10.
McClung *v.* Silliman, 6 Wheat. 604.
Johnson Company *v.* Wharton, 152 U. S. 260.
Ex parte Yerger, 8 Wall. 104.
McIntire *v.* Wood, 7 Cranch 506.
Kendall *v.* U. S., 12 Pet. 616.
Cary *v.* Curtis, 3 How. 245.

Congress can not assume judicial powers, nor can it delegate any such power to an executive officer. Appeals from the exercise of a judicial power can not be taken to an executive officer, but only to an appellate court. There is nothing in this section, however, which would prevent a ministerial officer, or person directed by law, from doing an act necessary to bring a person before a court possessing jurisdiction over him.

Kilbourn *v.* Thompson, 103 U. S. 168.
Andrews *v.* Hovey, 124 U. S. 717.
Gordon's Case, 7 Ct. Cl. 1.
Prigg *v.* Pennsylvania, 16 Pet. 539.
Angle *v.* Chicago, etc., R. Co., 151 U. S. 20.
Ableman *v.* Booth, 21 How. 506.

Imposing Judicial or Nonjudicial Duties on the Courts

In general.—Congress has no power to assign to the judiciary any but judicial duties; but there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them and which are susceptible to judicial determination, but which Congress may or may not bring within the cognizance of the courts.

Hayburn's Case, 2 Dall. 409.
Gordon *v.* U. S., 117 U. S. 697.
In re Sanborn, 148 U. S. 222.
U. S. *v.* Todd, 13 How. 52, note.
Murray *v.* Hoboken Land, etc., Co., 18 How. 284.

Congress may provide for the review of the action of commissions and boards created by it, exercising only *quasi* judicial powers, by the transfer of their proceedings and decisions to judicial tribunals for examination and determination *de novo*.[1]

Stephens *v.* Cherokee Nation, 174 U. S. 477.
See also—
U. S. *v.* Ritchie, 17 How. 533.
Reagan *v.* Farmers Loan, etc., Co., 154 U. S. 362.
I. C. C. *v.* Brimson, 154 U. S. 447.

Courts will not interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as would be just both to the owner and to the public.

San Diego Land, etc., Co. *v.* National City, 174 U. S. 739.

[1] See also commerce clause, p. 83.

Congress may impose special duties on a judge under a treaty.

U. S. *v.* Ferreira, 13 How. 48.
Muskrat *v.* U. S., 219 U. S. 346.

Right of Government to appeal without power to set aside verdict.—An act of Congress giving the United States a right of appeal from a judgment of acquittal is invalid when it further provides "that if, on such appeal, it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside," as in such case the opinion of the court would be advisory merely, and the discharge of such a function is not an exercise of the judicial power.

U. S. *v.* Evans, 213 U. S. 297.

Issue of subpœnas in aid of administrative examinations.—An act of Congress authorizing the Interstate Commerce Commission to invoke the aid of any court of the United States in requiring the attendance of witnesses and the production of documents, books, and papers is valid.

I. C. C. *v.* Brimson, 154 U. S. 489.
In re Gross, 78 Fed. 107.

Appointment of supervisors of election.—An act of Congress requiring the circuit courts to appoint supervisors of election is not unauthorized as imposing upon the circuit courts duties not judicial.

Ex parte Siebold, 100 U. S. 397.

Establishment of Federal Courts

The Supreme Court exists by virtue of a direct grant of power from the people. Congress can not confer jurisdiction upon any courts except those existing under the Constitution and laws of the United States. The entire judicial power delegated by the Constitution does not vest *ipso facto* in the courts created by Congress. The inferior Federal courts derive their judicial power from Congress, not directly from the Constitution, and can exercise only such powers as Congress sees fit to confer.

Rhode Island *v.* Massachusetts, 12 Pet. 720.
Houston *v.* Moore, 5 Wheat. 27.
Turner *v.* Bank, 4 Dall. 10.

Legislation is necessary to vest in the inferior courts their judicial power; the power, although originating in the Constitution, being dependent for distribution, organization, and mode of exercise entirely upon the action of Congress. It is only in courts ordained and established by itself that Congress can vest any portion of the judicial power of the United States. Congress can not vest any portion of the judicial power here referred to in State courts. Congress can not give jurisdiction to, or require the services of, a State officer as such; but State officers may be authorized to perform duties merely incidental to the

judicial power; e. g., the issuing of a warrant for a deserting seaman by a justice of the peace.

McClung *v.* Silliman, 6 Wheat. 604.
Cary *v.* Curtis, 3 How. 245.
Martin *v.* Hunter, 1 Wheat. 330.
Prigg *v.* Pennsylvania, 16 Pet. 539.
Robertson *v.* Baldwin, 165 U. S. 279.

Under this clause Congress may invest an inferior Federal court with jurisdiction over matters wherein the Supreme Court has original but not exclusive jurisdiction. Inferior courts may be given original jurisdiction in matters affecting consuls, and an act which confers on the circuit courts jurisdiction to restrain combinations to obstruct interstate commerce is not void for want of power. Congress may establish circuit and district courts in any State of the Union and may confer on them equitable jurisdiction in cases coming within the Constitution, and in all cases to which the judicial power extends Congress may rightfully vest exclusive jurisdiction.

Ames *v.* Kansas, 111 U. S. 471.
Bors *v.* Preston, 111 U. S. 256.
U. S. *v.* Elliott, 64 Fed. 27.
Livingston *v.* Story, 9 Pet. 655.
The *Moses Taylor*, 4 Wall. 430.
Davis *v.* Packard, 7 Pet. 281.

An act adopting State remedies is valid, and the statute requiring Federal courts to conform to State practice does not require them to renounce jurisdiction lawfully acquired under acts of Congress, nor does it conflict with the constitutional clause prescribing the equity jurisdiction of the courts. The power conferred by this clause does not warrant Congress in abrogating any established law of property or in removing any obligation of the citizens of a State to submit to the rule of the local sovereign.

Ex parte Boyd, 105 U. S. 652.
Phelps *v.* Oaks, 117 U. S. 239.
Suydam *v.* Williamson, 24 How. 433.

The Federal courts are in no sense agencies of the Federal Government, and the Federal Government can not be held liable for their errors.

U. S. *v.* Dunnington, 146 U. S. 351.

Provisions Mandatory on Congress

The language of the article throughout is manifestly designed to be mandatory upon the legislature. Its obligatory force is so imperative that Congress could not, without a violation of its duty, have refused to carry it into operation, but Congress can not vest any portion of the judicial power of the United States except in courts ordained and established by itself.

Martin *v.* Hunter, 1 Wheat. 328.

District of Columbia Courts

That the Supreme Court of the District of Columbia is a court of the United States results from the right of exclusive legislation over the District which the Constitution has given to Congress.

Embry *v.* Palmer, 107 U. S. 10.

Justices of the peace in the District of Columbia, in the exercise of the jurisdiction conferred upon them by Congress to try and determine cases, criminal or civil, are, in some sense, judicial officers, but they are not inferior courts of the United States, for the Constitution requires judges of all such courts to be appointed during good behavior.

Capital Traction Co. *v.* Hof, 174 U. S. 17.

Court of Claims

The act of Congress establishing the Court of Claims is constitutional.

Congress may undoubtedly establish tribunals with special powers to examine testimony and decide, in the first instance, upon the validity and justice of any claim for money against the United States, subject to the supervision and control of Congress, or a head of any of the executive departments.

Gordon *v.* U. S., 117 U. S. 699; but in this case the act of March 3, 1863, providing that judgments of the Court of Claims should be estimated for by the Secretary of the Treasury before being paid, was held unconstitutional in that it amounted to a denial of judicial power and the allowance of an appeal to the Supreme Court was unauthorized.

Jurisdiction

In general.—The jurisdiction of the Federal courts is limited by the Constitution. The vesting of judicial power is imperative, and the power to establish courts and confer jurisdiction upon them is unlimited; but the courts thus created possess no jurisdiction but what is given them by the power which creates them. The creation of the courts does not *ipso facto* confer any jurisdiction; positive legislation to that end is necessary.

Chisholm *v.* Georgia, 2 Dall. 432.
Hodgson *v.* Bowerbank, 5 Cranch 304.
Martin *v.* Hunter, 1 Wheat. 328.
Anderson *v.* Dunn, 6 Wheat. 214.
Mayor *v.* Cooper, 6 Wall. 251.
U. S. *v.* Hudson, 7 Cranch 33.
Turner *v.* Bank, 4 Dall. 10.
McClung *v.* Silliman, 6 Wheat. 604.
Cary *v.* Curtis, 3 How. 245.
Fontain *v.* Ravenel, 17 How. 384.
Johnson Company *v.* Wharton, 152 U. S. 260.
Insurance Company *v.* Dunn, 19 Wall. 226.
Gaines *v.* Fuentes, 92 U. S. 10.
Windsor *v.* McVeigh, 93 U. S. 274.
Mitchell *v.* Clark, 110 U. S. 633.

It was said in Kline *v.* Burke Constr. Co. (260 U. S. —) that jurisdiction of inferior courts may be granted, withheld, or withdrawn in the discretion of Congress.

As to the common-law jurisdiction of Federal courts see—

Fitch *v.* Creighton, 24 How. 159.
Rice *v.* Railroad Company, 1 Black 374.

As to the criminal jurisdiction of the Federal courts see—

U. S. *v.* Worrall, 2 Dall. 384.
U. S. *v.* Hudson, 7 Cranch 32.
U. S. *v.* Coolidge, 1 Wheat. 415.
U. S. *v.* Hall, 98 U. S. 343.
U. S. *v.* Britton, 108 U. S. 199.
Jones *v.* U. S., 137 U. S. 202.
U. S. *v.* Eaton, 144 U. S. 677.

As to criminal jurisdiction in general and special cases see—

Bird *v.* U. S., 187 U. S. 118.
Hyde *v.* Shine, 199 U. S. 62.
Lamar *v.* U. S., 240 U. S. 60.

Equity jurisdiction.—Congress may confer on circuit and district courts equitable jurisdiction in cases coming within the Constitution.

Livingston *v.* Story, 9 Pet. 632.
Fontain *v.* Ravenel, 17 How. 384.

Where Congress has given a Federal court jurisdiction of an action at law in certain cases, such court does not thereby acquire jurisdiction to entertain in those cases a bill in equity not relating to an action at law.

Livingston *v.* Van Ingen, 9 Johns. (N. Y.) 507.
Giles *v.* Harris, 189 U. S. 475.
Yost *v.* Dallas County, 236 U. S. 50.

Special jurisdiction.—An act conferring on the district court jurisdiction to adjudicate French and Spanish land grants on written evidence of title is to be strictly construed, and confers no jurisdiction to render a decree founded on mere adverse possession.

U. S. *v.* Rillieux, 14 How. 190.

Suits by or against national banks.—Act conferring on Federal circuit courts jurisdiction of all suits by or against national banks, irrespective of the subject matter, held constitutional.

Foss *v.* First Nat. Bank, 3 Fed. 185; decree affirmed in Bissell *v.* Foss, 114 U. S. 252.
First Nat. Bank *v.* Fellows, 244 U. S. 416.

"Inferior courts" are of special and limited authority erected on such principles that proceedings must show their jurisdiction, their judgments being entirely disregarded for this purpose, and whose judgments are subject to revision by an appellate court. Their jurisdiction depends exclusively on the Consti-

tution and the terms of statutes passed in pursuance thereof, and must appear of record.

Cuddy, Petitioner, 131 U. S. 284.
Grignon *v.* Astor, 2 How. 341.
Kempe *v.* Kennedy, 5 Cranch 185.
Ex parte Watkins, 3 Pet. 205.
Grace *v.* American Ins. Co., 109 U. S. 283.
See also—
Mossman *v.* Higgenson, 4 Dall. 14.
Bors *v.* Preston, 111 U. S. 255.
Mansfield etc., R. Co. *v.* Swan, 111 U. S. 382.
Continental Ins. Co. *v.* Rhoads, 119 U. S. 239.
King Brdg. Co. *v.* Otoe Co., 120 U. S. 226.
Lehigh Min. Co. *v.* Kelly, 160 U. S. 337.
Hanford v. Davies, 163 U. S. 279.
U. S. Bank *v.* Deveaux, 5 Cranch 86.
American Ins. Co. *v.* Cotton, 1 Pet. 545.

The inferior Federal courts contemplated by this section are not inferior in the technical sense of that term, but they are courts of limited jurisdiction, and they can exercise only that jurisdiction which is conferred upon them by act of Congress, either expressly or by necessary implication. As an instance of a power necessarily implied, the power to punish for contempt is deemed to be inherent. The inferior Federal courts can not exercise common-law jurisdiction nor proceed by information in criminal cases unless the power is granted by Congress. Their respective jurisdictions must be defined by Congress, and can not be enlarged or restricted by State laws.

Kempe *v.* Kennedy, 5 Cranch 185.
Ex parte Cabrera, 1 Wash. (C. C.) 235.
Turner *v.* Bank, 4 Dall. 10.
U. S. *v.* Hudson, 7 Cranch 34.
Ex parte Bollman, 4 Cranch 75.
U. S. *v.* Joe, 26 Fed. Cas. No. 15,478.
Osborn *v.* Bank, 9 Wheat. 738.
U. S. *v.* Peters, 5 Cranch 115.
See also—
McCormick *v.* Sullivant, 10 Wheat. 199.
Kennedy *v.* Georgia State Bank, 8 How. 612.
Stuart *v.* Easton, 156 U. S. 47.
Ex parte Terry, 128 U. S. 302.
In re Debs, 158 U. S. 596.
U. S. *v.* Coolidge, 1 Wheat. 415.
U. S. *v* Bevans, 3 Wheat. 336.
In re Barry, 136 U. S. 609.
Steamboat *Orleans v.* Phoebus, 11 Pet. 184.
Toland *v.* Sprague, 12 Pet. 330.
Cowles *v.* Mercer County, 7 Wall. 118.
Lincoln County *v.* Luning, 133 U. S. 530.
Leadville Coal Co. *v.* McCreery, 141 U. S. 477.
Mexican Cent. R. Co. *v.* Pinckney, 149 U. S. 194.

Notwithstanding Congress may adopt State procedure for the Federal courts, State legislation prescribing modes of redress can not, after adoption, operate to deprive the Federal courts of jurisdiction conferred by citizenship of the parties to an action.

Jurisdiction can not be conferred on the courts by stipulation of the parties.

Chicot County *v.* Sherwood, 148 U. S. 534.
Byers *v.* McAuley, 149 U. S. 618.

Property in custody of the law.—The United States courts and the courts of the several States, while they exercise jurisdiction in the same territory, do not exercise it on the same plane. A specific thing, once taken into the jurisdiction of the one, is immediately removed from the judicial power of the other.

Covell *v.* Heyman, 111 U. S. 176.
See also—
Day *v.* Gallup, 2 Wall. 97.
Ex parte Siebold, 100 U. S. 371.
In re Barrus, 136 U. S. 586.
Shields *v.* Coleman, 157 U. S. 168.
Wabash R. Co. *v.* Adelbert College, 208 U. S. 38.
Ingersoll *v.* Coram, 211 U. S. 335.
Claflin *v.* Houseman, 93 U. S. 130.
Brown *v.* Clarke, 4 How. 4.
Freeman *v.* Howe, 24 How. 450.
Heidritter *v.* Elizabeth Oilcloth Co., 112 U. S. 294.
In re Swan, 150 U. S. 637.
Palmer *v.* Texas, 212 U. S. 118.
Peck *v.* Jenness, 7 How. 612.
Pulliam *v.* Osborne, 17 How. 471.
Put in Bay Waterworks, etc., Co. *v.* Ryan, 181 U. S. 409.
The *Santissima Trinidad*, 7 Wheat. 283.
Gumbel *v.* Pitkin, 124 U. S. 131.
The *Lottawanna*, 20 Wall. 201.
Osborn *v.* U. S., 91 U. S. 474.
Erwin *v.* Lowry, 7 How. 172.
Waterman *v.* Canal-Louisiana Bank, etc., Co., 215 U. S. 33.
Yonley *v.* Lavender, 21 Wall. 276.
Green *v.* Creighton, 23 How. 90.
Moran *v.* Sturges, 154 U. S. 256.
Shelby *v.* Bacon, 10 How. 56.
Peale *v.* Phipps, 14 How. 368.
Earle *v.* Pennsylvania, 178 U. S. 449.
People's Bank *v.* Calhoun, 102 U. S. 256.
Calhoun *v.* Lanaux, 127 U. S. 634.
Leadville Coal Co. *v.* McCreery, 141 U. S. 475.
U. S. Trust Co. *v.* Wabash R. Co., 150 U. S. 287.
Seney *v.* Wabash R. Co., 150 U. S. 310.
Porter *v.* Sabin, 149 U. S 473.
Shields *v.* Coleman, 157 U. S. 168.
Grant *v.* Buckner, 172 U. S. 232.
Erb *v.* Morasch, 177 U. S. 584.

Injunctions by State courts against proceedings in Federal courts.—An injunction issued in a State court is inoperative in any manner to affect process or proceedings in the Federal courts.

U. S. v. Keokuk, 6 Wall. 514.
See also—
McKim *v.* Voorhies, 7 Cranch 279.
Pennsylvania *v.* Wheeling, etc., Brdg. Co., 18 How. 421.
Amy *v.* Supervisors, 11 Wall. 136.
Central Nat. Bank *v.* Stevens, 169 U. S. 432.

Effect on action in Federal courts of subsequent proceedings in State courts.—The jurisdiction of a United States circuit court over a cause properly before it can not be defeated by the institution by one of the parties in a State court, whether civil or criminal, involving the same legal questions.

Prout *v.* Starr, 188 U. S. 537.
Wallace *v.* McConnell, 13 Pet. 136.

A Federal court in which is first raised the question of the validity, under the Federal Constitution, of a State statute, has a right to decide that question to the exclusion of the State courts, and may enjoin criminal proceedings subsequently commenced under it in the State court until its duty is performed.

Ex parte Young, 209 U. S. 123.

Proceedings before State water board to determine rights of claimants to waters of a stream differs so from private suits between a few of the claimants in the Federal court restraining encroachments on rights in stream as to render rule inapplicable that a court of competent jurisdiction first obtaining jurisdiction of the same matter will retain it.

Pacific Live Stock Co. *v.* Lewis, 241 U. S. 440.

In Looney *v.* Eastern Texas R. Co. (247 U. S. 214) it was said that the use of injunctions by Federal courts first acquiring jurisdiction over the parties or the subject matter of a suit for the purpose of protecting and preserving that jurisdiction until the object of the suit is accomplished, is well recognized, and Judicial Code, section 265, prohibiting injunction staying proceedings in State court is not applicable to such proceedings.

Once jurisdiction has been granted to the Federal courts, it rests with the courts themselves to determine whether a particular case comes within that jurisdiction. The judicial power resting in courts can not be denied them, and any act which has that effect in prescribing rules of decision is void. New rights and remedies may have the effect of increasing the business of a court; but that in no proper sense increases its jurisdiction. To give jurisdiction to a Federal court it is sufficient that the jurisdiction may be found in the Constitution or the law, but the two must cooperate, the Constitution as the fountain and the laws of Congress as the streams which convey the jurisdiction to the court.

U. S. *v.* Peters, 5 Cranch 136.
Ableman *v.* Booth, 21 How. 506.
Freeman *v.* Howe, 24 How. 459.
In re Tyler, 149 U. S. 164.
Missouri Pac. R. Co. *v.* Fitzgerald, 160 U. S. 582.
Klein's case, 7 Ct. Cl. 240.
Buford *v.* Holley, 28 Fed. 680.
United Copper, etc., Co. *v.* Amalgamated Copper Co., 244 U. S. 261.

Withdrawal of jurisdiction.—Congress may not withdraw from judicial cognizance any matter which from its nature is the subject of a suit at common law or in equity or admiralty.

Murray *v.* Hoboken Land, etc., Co., 18 How. 284.

Congress, under its power over Indians and to control Federal courts, could take away even as to pending cases as it did by act of June 25, 1910, jurisdiction of the Federal district courts to establish equitable title of heirs of an Indian allottee and vest the power of ascertaining heirs in the Secretary of the Interior.

Hallowell *v.* Commons, 239 U. S. 506.

It is questionable whether Congress can, under the Constitution, abrogate the power of Federal judges as defined by the common law in the submission of cases and the control of the deliberation of juries.

Liverpool, etc., Ins. Co. *v.* Friedman, 133 Fed. 713.
Ex parte Robinson, 19 Wall. 505.

Termination of jurisdiction.—Termination of proceedings brought in a Federal court to foreclose mortgage on railroad property terminates jurisdiction of that tribunal, and purchaser is not immune from suit in State court relating to management of property on theory that Federal court was only proper forum having jurisdiction.

International, etc., R. Co. *v.* Anderson County, 246 U. S. 424.

Writs

In general.—Congress may invest inferior courts with power to issue *mandamus*, but it can not empower a commissioner to commit a person for an alleged contempt. The Federal courts have power to issue writs only when necessary in aid of their jurisdiction in a pending case, and they can apply the writ of *habeas corpus* to a person in jail only when he is confined under and by the authority of the United States. In such case the Federal courts have exclusive jurisdiction, and *habeas corpus* can not issue from a State court. Congress may provide for the appointment of a board of land commissioners to settle private land claims.

Kendall *v.* U. S. 12 Pet. 626.
Ex parte Doll, Fed. Cas. No. 3968.
Ex parte Everts, 1 Bond 178.
Coleman *v.* Tennessee, 97 U. S. 519.
Duncan *v.* Darst, 1 How. 308.
U. S. *v.* Ritchie, 17 How. 530.
See also—
In re Burns, 136 U. S. 590.
Baker *v.* Grice, 169 U. S. 290.
Ableman *v.* Booth, 21 How. 523.
Tarble's Case, 13 Wall. 402.
Robb *v.* Connolly, 111 U. S. 639.

Control of executive officers by mandamus or injunction.—The judiciary can not properly interfere with executive action when the executive officer is authorized to exercise his judgment or discretion; it is only in cases where the executive officer has to per-

form a purely ministerial act that the courts, either by a proceeding in *mandamus* or injunction, can direct or control the performance of such ministerial act.

Dudley *v.* James, 83 Fed. 345.
Gaines *v.* Thompson, 7 Wall. 347.

The President can not be restrained by injunction from carrying into effect an act of Congress alleged to be unconstitutional.

Mississippi *v.* Johnson, 4 Wall. 475.
New Orleans *v.* Paine, 147 U. S. 261.

Controlling Effect of Decisions

In General

It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case they may be respected but ought not to control the judgment in a subsequent suit when the very point is presented for decision.

Cohens *v.* Virginia, 6 Wheat. 399.
See also—
Watson *v.* St. Louis, etc., R. Co., 169 Fed. 942; judgment affirmed, 223 U. S. 745.
People *v.* Tax Comrs., 67 N. E. 69; affirmed in Metropolitan Street R. Co. *v.* New York, 199 U. S. 1.
Brooks *v.* Marbury, 11 Wheat. 78.

In courts organized under the common law no opinion can be relied on as binding authority unless the case called for its expression. Its weight of reason must depend on what it contains; but it can not be said that a case is not authority on one point because although that point was properly presented and decided in the regular course of the consideration of the case, something else was found in the end which disposed of the whole matter.

Carroll *v.* Carroll, 16 How. 275.
Florida Cent. R. Co. *v.* Schutte, 103 U. S. 118.
Mast, Foos & Co. *v.* Stover Mfg. Co., 177 U. S. 485.

Where there are two grounds upon either of which an appellate court may rest its decision, and it adopts both, the ruling on neither is *obiter dictum*, but each is the judgment of the court and of equal validity. A long-standing decision of a doubtful question which has become a rule of property affecting many land titles should not be disturbed.

United States *v.* Title Ins. Co., 265 U. S. 472.

Prior Decisions in Same Case as Law of the Case

A decision on demurrer is the law of the case until a different rule is laid down by the Supreme Court, although such decision was rendered by another judge than the one trying the case finally.

Wakelee *v.* Davis, 44 Fed. 532; decree affirmed in Davis *v.* Wakelee, 156 U. S. 680.

Decisions by Divided Court

Where three judges of the Supreme Court who were in the minority on a general question concurred in an opinion of one of the four in majority in relation to another question the prin-

ciples established therein may be considered no longer open for controversy, but as the settled law of the court.

Boyle *v.* Zacharie, 6 Pet. 348.

An affirmance in the Supreme Court on equal division of opinion is not an authority for the determination of other cases, either in that court or in the inferior Federal courts.

Hertz *v.* Woodman, 218 U. S. 205.

Decisions of the Supreme Court

In general.—A question repeatedly decided in the Supreme Court is settled beyond further discussion.

Wright *v.* Sill, 2 Black 544.
McCullough *v.* Virginia, 172 U. S. 102.

Where the questions arising on demurrer in a case brought from the circuit court to the Supreme Court had been decided, so far as they affected the merits of the case, in a case previously argued at the same term between other parties, the court declined to hear an argument upon the technical questions, and remanded the case to the circuit court.

Smith *v.* Ely, 15 How. 137.

A decision of the Supreme Court affirming a decision of a State court that upheld a State statute of limitation, the constitutional validity of which was dependent on the existence of some precedent or coincident remedy, must be regarded as expressly deciding that such remedy exists, and can not be disregarded as a precedent in a later case on writ of error to a lower Federal court on the theory that the existence of such remedy was merely assumed by the United States Supreme Court in the former case because it was bound in that particular to follow the decision of the State court, but is not so bound in a case arising in a Federal court.

Saranac Land, etc., Co. *v.* Roberts, 177 U. S. 318.

The authority of a decision of the Supreme Court upholding a rule of a court of the District of Columbia is not lessened by the former court's failure to give the grounds for its decision, as this omission does not give rise to an inference that it had doubts as to the validity of the rule, but rather that it regarded the grounds of challenge to such validity as without foundation.

Fidelity & Deposit Co. *v.* U. S., 187 U. S. 315.

Constitutional questions.[1]—The right and duty of the Supreme Court to decide whether or not an act of Congress was repugnant to the Constitution and therefore void was first decided in the early case of Marbury *v.* Madison (1 Cranch, 137), in which Chief Justice Marshall said:

> It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So, if a law

[1] See also "Power of United States courts to declare acts of Congress unconstitutional," p. 409.

be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformable to the law, disregarding the Constitution, or conformable to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case: this is of the very essence of judicial duty. If then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply. (P. 177.)

In Fairbank *v.* U. S. (181 U. S. 283) it was said that this judicial duty of upholding the provisions of the Constitution as against any legislation conflicting therewith has become now an accepted fact in the judicial life of this nation. This case involved an act of Congress imposing a stamp tax on foreign bills of lading, which was held to be in conflict with Article I, section 9, of the Constitution, that "No tax or duty shall be laid on articles exported from any state." In the dissenting opinion of Justice Harlan (concurred in by Justices Gray, White, and McKenna) it was said:

Practically no weight has been given in the opinion just filed to the fact that the power now denied to Congress has been exercised since the organization of the Government without any suggestion or even intimation by a single jurist or statesman during all that period that the Constitution forbade its exercise.

The court has no veto power on legislation enacted by Congress, and its right to declare an act of Congress unconstitutional can only be exercised when a proper case between opposing parties is submitted for determination.

Muskrat *v.* U. S., 219 U. S. 346.

In Halter *v.* Nebraska (205 U. S. 34) the court said: "We must not overlook certain principles of constitutional construction, long ago established and steadily adhered to, which preclude a judicial tribunal from holding a legislative enactment, Federal or State, unconstitutional and void, unless it is manifestly so."

In Pollock *v.* Farmers' Loan, etc., Co. (157 U. S. 429) it was said that the doctrine of *stare decisis* is a salutary one, and is to be adhered to on proper occasions in respect of decisions directly upon points in issue; but that the court should not extend any decision upon a constitutional question if it is convinced that error in principle might supervene.

The duty of the court in construing a statute includes the duty of avoiding a construction which raises grave and doubtful constitutional questions if the statute can be reasonably construed so as to avoid such questions.

U. S. *v.* Delaware & H. Co., 213 U. S. 366.
U. S. *v.* Jin Fuey Moy, 241 U. S. 394.
Bratton *v.* Chandler, 260 U. S. 110.
Addy Co. *v.* U. S., 264 U. S. 239.

The Supreme Court will not pass upon the constitutional validity of an act presenting such critical and important issues

as those presented by the Industrial Relations Act of Kansas unless the case before the court requires it.

Howat *v.* Kansas, 258 U. S. 181.

Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise, and by the other of which such questions are avoided, the latter construction should be adopted.

Texas *v.* Eastern Texas R. Co., 258 U. S. 204.
Arkansas Gas Co. *v.* Railroad Comm., 261 U. S. 379.

Every act of Congress to be valid must find in the Constitution some warrant for its passage; but while construction, for the purpose of conferring a power, should be resorted to with great caution, yet resort must be had to every reasonable construction to save a statute from unconstitutionality, and a choice of means by Congress is not to be adjudged invalid unless the conflict between the Constitution and the statute is clear and strong.

U. S. *v.* Harris, 106 U. S. 635.
Hooper *v.* California, 155 U. S. 657.
Mugler *v.* Kansas, 123 U. S. 661.
Sweet *v.* Rechel, 159 U. S. 392.

In Mitchell *v.* Burlington (4 Wall. 270) it was held that if municipal bonds when issued are valid by the constitution and laws of the State, as expounded by the highest judicial authority whose duty it was to interpret them, they can not be made invalid by subsequent judicial interpretation of an opposite kind.

In Cox *v.* Wood (247 U. S. 3), the court held that relator's claim that he was entitled to his discharge from military service under selective draft act on ground that call to service for which draft was made under act was for duty in foreign country need not be considered as original proposition.

The constitutionality of an act is not involved in a case where the plaintiff is not affected by the provisions of the act.

Chicago Board of Trade *v.* Olsen, 262 U. S. 1.

Jurisdictional questions.—Where the question of jurisdiction does not appear to have been contested in a previously adjudicated case, the court is not bound by the view expressed therein.

Cross *v.* Burke, 146 U. S. 82.

New *v.* Oklahoma (195 U. S. 252), holding that the Supreme Court will not consider itself bound on the question of its jurisdiction by a prior case in which jurisdiction was entertained without any suggestion as to the want of it.

Arant *v.* Lane (245 U. S. 166), holding that cases in which controversies were determined on certificates of Court of Appeals of the District of Columbia, where no question was raised concerning the power to certify held not authoritative on the question as to the power to certify.

Res judicata.—A decree of a Federal circuit court in a suit involving rights protected by the Federal Constitution must be

given in the Federal courts the force and effect to which it is entitled under the principles of *res judicata* as settled by the Federal Supreme Court, though they may differ from the doctrine announced by the courts of the State in which the circuit court was sitting.

Gunter *v.* Atlantic, etc., R. Co., 200 U. S. 273.

Legislative policy.—It is not within either the disposition or power of this court to revise the necessarily complicated taxing systems of the States for the purpose of attempting to produce what might be thought to be a more just distribution of the burdens of taxation than that arrived at by the State legislatures.

Dane *v.* Jackson, 256 U. S. 598.

Legislative declaration of facts, affording ground for rent regulation in the District of Columbia, entitled to great respect.

Block *v.* Hirsh, 256 U. S. 135.
Marcus Brown Co. *v.* Feldman, 256 U. S. 170.

Rule of property.—Where the title to land has once been determined by a decision of the Supreme Court, such decision becomes a rule of property and will not be disturbed.

Minnesota Co. *v.* National Co., 3 Wall. 332.
Mitchell *v.* Burlington, 4 Wall. 270.
Nadal *v.* May, 233 U. S. 447.

Decisions of Circuit Courts of Appeals

A decision by the circuit court of appeals in any circuit, so long as it remains unappealed from, and so long as the Supreme Court has issued no writ of certiorari to reexamine it, is to be regarded as having more effect in other Federal courts than that ordinarily given to those of the highest State tribunals, or other courts of merely concurrent jurisdiction.

Beach *v.* Hobbs, 82 Fed. 916; decree reversed in 92 Fed. 146.
See also—
Smith *v.* Guffey, 202 Fed. 106; decree reversed in Guffey *v.* Smith, 237 U. S. 101.
Consolidated, etc., Tire Co. *v.* Diamond Rubber Co., 162 Fed. 892, affirming decree 157 Fed. 677, and decree affirmed in Diamond Rubber Co. *v.* Consolidated Tire Co., 220 U. S. 428.
The Fayerweather Will Cases, 118 Fed. 943; decree affirmed in Fayerweather *v.* Ritch, 195 U. S. 276.
Mast, Foos & Co. *v.* Stover Mfg. Co., 177 U. S. 485.
Rock Spring Distilling Co. *v.* Gaines, 246 U. S. 312.

Decisions of District Courts

Judges who sit in the same court should not attempt to overrule the decisions of each other, especially on questions involving rules of property and practice, except for the most cogent reasons.

Shreve *v.* Cheesman, 69 Fed. 785.
Boatmen's Bank *v.* Fritzlen, 135 Fed. 650, reversing judgment Weldon *v.* Fritzlen, 128 Fed. 608, and writ of certiorari denied Fritzlen *v.* Boatmen's Bank, 198 U. S. 586.
See also—
Hancock Inspirator Co. *v.* Regester, 35 Fed. 61; appeal dismissed 149 U. S. 775.

Territorial and Provisional Courts

The courts of a Territory, although they derive their jurisdiction from Congress, are not United States courts within the meaning of this section and so do not come within the purview of acts of Congress which treat of "courts of the United States" only. These courts are not constitutional in the sense that the judicial power conferred by the Constitution can be deposited in them. The jurisdiction with which they are invested is not a part of that judicial power defined in this article, but is conferred in the execution of those general powers which Congress possesses over the Territories.

The *City of Panama*, 101 U. S. 460.
Good *v.* Martin, 95 U. S. 98.
American Ins. Co. *v.* Canter, 1 Pet. 546.
U. S. *v.* Coe, 155 U. S. 85.
See also—
McAllister *v.* U. S., 141 U. S. 174.
U. S. *v.* McMillan, 165 U. S. 510.
Benner *v.* Porter, 9 How. 240.
Downes *v.* Bidwell, 182 U. S. 282.

The fact that the judges of Territorial courts are appointed by the President under act of Congress does not make the courts which they hold courts of the United States. Broadly speaking, however, the Territorial district courts are dual in their nature and sit both as Territorial and Federal courts. Congress may define the jurisdiction of Territorial courts, or delegate the authority to the Territorial government.

Clinton *v.* Englebrecht, 13 Wall. 447.
Gon-Shay-Ee, petitioner, 130 U. S. 349.
Leitensdorfer *v.* Webb, 20 How. 176.
See also—
McAllister *v.* U. S., 141 U. S. 174.
U. S. *v.* Pridgeon, 153 U. S. 58.

This article does not make any provision for abnormal conditions in conquered territory nor permit the establishment by Congress of courts in insurrectionary districts. In the performance of the duty of National Government, as a belligerent, to protect persons and property, the President has power, incident to military occupation, to establish provisional courts at the seat of war; but such courts can not decide cases of prize of war as ordinary courts of admiralty.

Mechanics', etc., Bank *v.* Union Bank, 22 Wall. 296.
The *Grapeshot*, 9 Wall. 132.
Lewis *v.* Cocks, 23 Wall. 469.
Jecker *v.* Montgomery, 13 How. 515.
Ex parte Milligan, 4 Wall. 121.
In re Vidal, 179 U. S. 126.

Civil courts can not review proceedings and sentences of courts-martial where they are legally organized and have jurisdiction

of the offense and of the person of accused and have complied with the statutory requirements governing their proceedings.

Mullan *v.* U. S., 212 U. S. 516.

State Courts

In General

Courts of the United States and of the States are independent of each other in matters within their respective jurisdictions, the jurisdiction of the State courts not having been affected by the grant of judicial powers to the General Government, except where such jurisdiction would be incompatible with the powers granted to the United States. In some cases the Federal judicial power is necessarily exclusive of all State authority; in others it may be made so at the option of Congress, or it may be exercised concurrently with that of the states.

Taylor *v.* Carryl, 20 How. 597.
Supervisors *v.* Durant, 9 Wall. 418.
Martin *v.* Hunter, 1 Wheat. 304.
Houston *v.* Moore, 5 Wheat. 27.
Teal *v.* Felton, 12 How. 284.
Claflin *v.* Houseman, 93 U. S. 136.
Railway Co. *v.* Whitton, 13 Wall. 288.
Robertson *v.* Baldwin, 165 U. S. 275.

In Dier *v.* Banton, 262 U. S. 147, it was held that books and papers in possession of receiver in bankruptcy appointed by Federal court can not be taken by subpœna issuing from State court unless Federal court, exercising its discretion with due regard for comity, consents.

Source of Authority

Where jurisdiction may be conferred upon Federal courts it may be made exclusive; but if exclusive jurisdiction be neither express nor implied, State courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it. If the jurisdiction of the Federal courts is paramount in certain cases the State courts are prohibited from taking any cognizance of such cases, and all proceedings in a State court are void. Thus a statute authorizing proceedings in a State court in admiralty causes is unconstitutional. Congress can not confer jurisdiction on a State court.

Martin *v.* Hunter, 1 Wheat. 337.
Claflin *v.* Houseman, 93 U. S. 136.
Slocum *v.* Mayberry, 2 Wheat. 1.
Cohen *v.* Solomon, 66 Fed. 411.
The *Moses Taylor*, 4 Wall. 427.
Houston *v.* Moore, 5 Wheat. 27.

See also—

Osborn *v.* Bank, 9 Wheat. 738.
U. S. *v.* Peters, 5 Cranch 115.
Duncan *v.* Darst, 1 How. 301.
McNutt *v.* Bland, 2 How. 16.
Bank of Augusta *v.* Earle, 13 Pet. 590.
The *Hine v.* Trevor, 4 Wall. 555.
The *Lottawanna*, 21 Wall. 580.
The *J. E. Rumbell*, 148 U. S. 12.

The State can not confer any jurisdiction on the Federal courts nor prescribe the means or mode of its exercise. No part of the criminal jurisdiction can be delegated by Congress to State courts, but the same act may, as to its character and tendencies and the consequence involved, constitute an offense against both the State and Federal Governments, and may draw to its commission the penalties denounced by either, and a crime not made an offense under Federal law is cognizable in a State court.

Martin *v.* Hunter, 1 Wheat. 304.
U. S. *v.* Marigold, 9 How. 569.
State *v.* Buchanan, 5 Har. & J. 317, 9 Am. Dec. 534.
See also—
Cross *v.* North Carolina, 132 U. S. 139.
Crossley *v.* California, 168 U. S. 641.
Fox *v.* Ohio, 5 How. 433.
Prigg *v.* Pennsylvania, 16 Pet. 539.
Claflin *v.* Houseman, 93 U. S. 136.

Where Federal and State courts have concurrent jurisdiction in a civil or criminal case the tribunal which first obtains jurisdiction holds it, to the exclusion of the other, until its duty is performed; the acquisition of jurisdiction by the one devests the other of all jurisdiction. The sphere of action appropriated to the United States is beyond the reach of the judicial process issued by a State judge or a State court, and the same is true of State courts, which within their jurisdiction can not be interfered with by Federal process. A State court has no jurisdiction of a proceeding to deprive a Federal court receiver of the possession of property committed to him, nor has a State court jurisdiction of a suit against a Federal court receiver for his misconduct. Property in the possession of a court or its officer can not be disturbed under process of a court of concurrent jurisdiction, State or Federal.

Smith *v.* McIver, 9 Wheat. 535.
Covell *v.* Heyman, 111 U. S. 182.
Ableman *v.* Booth, 21 How. 516.
Amy *v.* Supervisors, 11 Wall. 138.
Calhoun *v.* Lanaux, 127 U. S. 640.
Baggs *v.* Martin, 179 U. S. 209.
Hagan *v.* Lucas, 10 Pet. 404.
See also—
Peck *v.* Jenness, 7 How. 624.
Buck *v.* Colbath, 3 Wall. 345.
Pulliam v. Osborne, 17 How. 475.
Taylor *v.* Taintor, 16 Wall. 370.
Farmers' Loan, etc., Co. *v.* Lake Street, etc., R. Co., 177 U. S. 62
Moran *v.* Sturges, 154 U. S. 274.
Riggs *v.* Johnson County, 6 Wall. 199.
Watson *v.* Jones, 13 Wall. 720.
Tua *v.* Carriere, 117 U. S. 208.
In re Johnson, 167 U. S. 125.

State courts are not without jurisdiction of personal injury action because parties were engaged in work under contract with the Federal Government.

Ohio River Contract Co. *v.* Gordon, 244 U. S. 68.

Habeas Corpus [1]

Habeas corpus can not issue from a State court to secure the release of a person held under the authority of Federal laws, but subject to the exclusive authority of the Federal courts to determine the legality of a detention under Federal authority State courts may determine the legality of the restraint of a person held within State limits, although depending on the Federal Constitution and laws. The extent of the Federal courts' power to inquire into the legality of restraint under the order of a State court under State laws is limited to a determination of the question whether the restraint is in violation of the Federal Constitution.

Duncan *v.* Darst, 1 How. 308.
Robb *v.* Connolly, 111 U. S. 639.
In re Wood, 140 U. S. 289.
See also—
Ableman *v.* Booth, 21 How. 523.
Tarble's Case, 13 Wall. 402.
Cook v. Hart, 146 U. S. 195.
Bergeman *v.* Backer, 157 U. S. 659.
Draper *v.* U. S., 164 U. S. 247.
Ker *v.* Illinois, 119 U. S. 436.
Whitten *v.* Tomlinson, 160 U. S. 231.
Ex parte Dorr, 3 How. 103.
Ex parte Crouch, 112 U. S. 178.
Ex parte Royall, 117 U. S. 241.

A Federal court should not, except in cases of peculiar urgency, issue a writ of *habeas corpus* to release one imprisoned under State authority.

New York *v.* Eno, 155 U. S. 89.
Tinsley *v.* Anderson, 171 U. S. 101.
Fitts *v.* McGhee, 172 U. S. 516.
See also—
Andrews *v.* Swartz, 156 U. S. 272.
Kohl *v.* Lehlback, 160 U. S. 293.
Crossley *v.* California, 168 U. S. 640.
In re Boardman, 169 U. S. 39.
Mahon *v.* Justice, 127 U. S. 700.
Baker *v.* Grice, 169 U. S. 284.
Harkrader *v.* Wadley, 172 U. S. 148.

A Federal court has power to issue a writ of *habeas corpus*, on petition of a United States marshal in the custody of a sheriff on the charge of murder, and to discharge him, if it appears that he committed the act in pursuance of a law of the United States, or that he is in custody in violation of the Constitution or laws of the United States.

In re Neagle, 135 U. S. 1.
Ohio *v.* Thomas, 173 U. S. 276.

[1] See also Art. I, sec. 9, cl. 2, p. 257.

Interstate Commerce [1]

Where Congress has legislated on a subject within its province, such as interstate commerce, its power as to such matter is exclusive, and the State courts have no jurisdiction thereof.

Texas, etc., R. Co. *v.* Mugg, 202 U. S. 242.
See also—
Texas, etc., R. Co. *v.* Abilene, etc., Oil Co., 204 U. S. 426.
Baltimore, etc., R. Co. *v.* Pitcairn Coal Co., 215 U. S. 481.
Robinson *v.* Baltimore, etc., R. Co., 222 U. S. 506.
Southern R. Co. *v.* Reid, 222 U. S. 424.
Mitchell, etc., Coal Co. *v.* Pennsylvania R. Co., 230 U. S. 247.
Pennsylvania R. Co. *v.* Puritan Coal Co., 237 U. S. 121.
American Exp. Co. *v.* Caldwell, 244 U. S. 617.
Pennsylvania R. Co. *v.* Stineman, 242 U. S. 298.
Northern Pac. R. Co. *v.* Solum, 247 U. S. 477.
Pennsylvania R. Co. *v.* Sonman, 242 U. S. 120.

Powers of Congress

Judges

This clause removes from Congress all control over the tenure of office of Federal judges, and precludes any diminution in their compensation during their term of office. Judges of inferior Federal courts established by Congress must be appointed to hold office during good behavior. The extra compensation received by a district judge holding court outside his own district is no part of his official salary. The fees allowed to justices of peace in the District of Columbia can not be diminished during their continuance in office. A person appointed to be a judge of a Territorial court is not contemplated by this clause, and hence the Constitution is not violated by a statute prescribing a fixed term of years for the office of such a judge or authorizing his displacement.

Martin *v.* Hunter, 1 Wheat. 304.
U. S. *v.* Ferreira, 13 How. 49.
U. S. *v.* Todd, 13 How. 52. note.
Hayburn's Case, 2 Dall. 410, note.
Benedict *v.* U. S., 176 U. S. 361.
U. S. *v.* Moore, 3 Cranch 160.
Wingard *v.* U. S., 141 U. S. 201.
American Ins. Co. *v.* Canter, 1 Pet. 546.
McAllister *v.* U. S., 141 U. S. 188.

A tax upon the net income of a United States district judge, assessed under the act of February 24, 1919 (40 Stat. 1062), by including his official salary in the computation, operates to diminish his compensation, and is therefore unconstitutional under this section.

Evans *v.* Gore, 253 U. S. 245.

Prescribing Rules of Decision

The provisions of the act of July 12, 1870, attempting to change the effect of pardons held unconstitutional.

[1] See also Commerce clause, p. 83.

Sec. 1.—Distribution of Judicial Power—Powers of Congress.

U S. *v.* Klein, 13 Wall. 147.
Witkowski's case, 7 Ct. Cl. 397.
James *v.* Appel, 192 U. S. 129.

Prescribing Forms of Proceedings

Congress possesses the sole right to say what shall be the forms of proceeding, either in equity or at law, in the courts of the United States, and in what cases an appeal shall be allowed or not. It is a matter of sound discretion, and to be exercised by Congress in such a manner as shall in its judgment best promote the public convenience and the true interests of the citizens.

Ex parte New Orleans City Bank, 3 How. 317.
Livingston *v.* Story, 9 Pet. 655.

The review of rulings of the trial court in a criminal case by an appeal taken under the Code of Laws of the District of Columbia, 1901, section 935, on behalf of the Government after acquittal, on which the court has no power to set aside the verdict, involves a determination of moot questions only, which is not a judicial function, and can not be required of a Federal court by Congress.

U. S. *v.* Evans, 213 U. S. 297.

Congress may alone determine the remedies which may be pursued for the enforcement of judgments in the Federal courts as well as the procedure to be adopted in the progress of the suit.

Lamaster *v.* Keeler, 123 U. S. 376.

Congress may prescribe the law of limitations for suits which may by law be removed into Federal courts, and when Congress has done so the law is binding on State and Federal courts.

Arnson *v.* Murphy, 109 U. S. 238.
Mitchell *v.* Clark, 110 U. S. 633.
Jenkins *v.* International Bank, 106 U. S. 571.
Jenkins *v.* Lowenthal, 110 U. S. 222.

Congress may confer upon the courts power to make alterations and additions in process as well as in modes of proceeding in suits. The power to alter and add to the process and modes of proceeding in a suit embraces the whole progress of such suit, and every transaction in it from its commencement to its termination, and until the judgment shall be satisfied.

Wayman *v.* Southard, 10 Wheat. 1.
U. S. Bank *v.* Halstead, 10 Wheat. 51.
Beers *v.* Haughton, 9 Pet. 359.
U. S. *v.* Union Pac. R. Co., 98 U. S. 604.

Providing for Appeals to Operate Retrospectively

An act of Congress extending the remedy by appeal to the Supreme Court to act retrospectively is not invalid as an invasion of the judicial domain, and destructive of vested rights.

Stephens *v.* Cherokee Nation, 174 U. S. 477.

Sec. 1.—Distribution of Judicial Power—Powers of Congress.

Prescribing Qualifications for Admission to the Bar

Congress has not the right to prescribe qualifications of persons who desire admission to the bar of the national courts as attorneys.

In re Shorter, 22 Fed. Cas. No. 12811, citing Ex parte Secombe, 19 How. 9.

Investigation of Affairs of Debtor of United States

A resolution of the House of Representatives authorizing an investigation by the House into the affairs of a debtor of the United States was in excess of the powers conferred on that body by the Constitution.

Kilbourn *v.* Thompson, 103 U. S. 196.

Authorizing Impeachment of Naturalization Certificates

The act of Congress of June 29, 1906, in authorizing the impeachment of certificates of naturalization theretofore issued for fraud consisting in the introduction of perjured testimony is not unconstitutional as an exercise of judicial power by the legislative department.

Johannessen *v.* U. S., 225 U. S. 227.

Admission and Exclusion of Aliens

The act of Congress of March 3, 1903, prohibiting the admission of aliens afflicted with a loathsome or with a dangerous contagious disease, and authorizing the Secretary of Commerce and Labor, upon a certificate of a medical inspector, to exact a penalty of $100 for each violation and to refuse clearance papers while such penalty remains unpaid, is not invalid as committing the collection of a penalty to an administrative officer without the necessity of resorting to the judicial power.

Oceanic Nav. Co. *v.* Stranahan, 214 U. S. 320.

Identification and Deportation of Aliens

Congress has power to forbid aliens from coming within the borders of the United States, and can devolve the power and duty of identifying and arresting such persons, and causing their deportation, upon executive or subordinate officials.

Turner *v.* Williams, 194 U. S. 291.

Power to Adjust Claims Under a Treaty

A power to adjust claims under a treaty may be constitutionally conferred on the Secretary of the Treasury as well as on the commissioner, but such a power is not judicial in either case in the sense in which judicial power is granted by the Constitution to the courts of the United States.

U. S. *v.* Ferreira, 13 How. 48.

Issue of Distress Warrant by Solicitor of Treasury

The issue of a distress warrant by the Solicitor of the Treasury under an act of Congress entitled "An act providing for the better organization of the Treasury Department" was held not to

be void as the exercise by an executive department of a judicial function.

Murray *v.* Hoboken Land, etc., Co., 18 How. 272.

See also—

Cruikshank *v.* Bidwell, 86 Fed. 7, decree denying motion for an injunction affirmed, as no tenable basis for equity interposition was shown, in 176 U. S. 73.

Authorizing Administrative Officers to Enforce Penalties

It is competent for Congress when legislating as to matters exclusively within its control to impose appropriate obligations and sanction their enforcement by reasonable money penalties, giving to executive officers the power to enforce such penalties without the necessity of invoking the judicial power.

Oceanic Nav. Co. *v.* Stranahan, 214 U. S. 339.
Origet *v.* Hedden, 155 U. S. 228.
Passavant *v.* U. S., 148 U. S. 214.
Bartlett *v.* Kane, 16 How. 263.
Decatur *v.* Paulding, 14 Pet. 499.

Removal and Transfer of Causes

Under this section Congress may provide for the transfer of a suit from one inferior tribunal to another and for the removal from State to Federal courts of causes to which the judicial power of the United States extends. This power is not to be found expressed in any grant to Congress; it is to be implied from the power of Congress to distribute the judicial power and affords an indirect means by which the Federal courts may acquire jurisdiction. Congress has no power, however, to remit to a special circuit court the business pending for trial before the State circuit court. The transfer of suits pending in a provisional court is also within the power of Congress.

Stuart *v.* Laird, 1 Cranch, 309.
Martin *v.* Hunter, 1 Wheat. 304.
Railroad Co. *v.* Whitton, 13 Wall. 270.
U. S. *v.* Hamilton, 3 Dall. 18.
Leitensdorfer *v.* Webb, 20 How. 182.

See also—

U. S. *v.* Ritchie, 17 How. 530.
Freemont *v.* U. S., 17 How. 542.
Mayor *v.* Cooper, 6 Wall. 252.
Insurance Co. *v.* Dunn, 19 Wall. 226
The *Grapeshot*, 7 Wall. 563.
Edwards *v.* Tanneret, 12 Wall. 449.

A cause may be removed from a State to a Federal court where it arises under the Constitution and laws of the United States, as well as where it arises between citizens of different States, and it is for Congress to say at what time the right shall be invoked, and at what stage of the proceedings a case may be removed. Congress may authorize removal before or after judgment, and regulate the method, and may prescribe a rule of limitations for

removal which shall be binding on both State and Federal courts.

Boom Co. *v.* Patterson, 98 U. S. 406.
Gaines *v.* Fuentes, 92 U. S. 10.
Martin *v.* Hunter, 1 Wheat. 350.
Mitchell *v.* Clark, 110 U. S. 641.
Ames *v.* Kansas, 111 U. S. 461.

A State can not forbid the removal of causes to the Federal courts. A statute prohibiting foreign corporations from doing business in the State without filing an agreement not to remove causes is void, and an agreement pursuant thereto is not binding. On the other hand, it has been held that as a State may prescribe any terms it sees fit upon which foreign corporations shall do business, and it may provide that in case such a corporation removes a cause to the Federal courts, the Secretary of State may revoke its license to do business. A statute requiring foreign corporations to submit to service of process may serve to give the proper State courts jurisdiction of foreign corporations. Parties to a suit can not, by agreement, oust the jurisdiction of the Federal courts, but the right of removal is inconsistent with the voluntary submission to a State court's jurisdiction, and the right may be waived by such submission.

Insurance Co. *v.* Morse, 20 Wall. 445.
Doyle *v.* Continental Ins. Co., 94 U. S. 540.
Southern Pac. Co. *v.* Denton, 146 U. S. 207.
Davis *v.* Packard, 6 Pet. 41.
Manning *v.* Amy, 140 U. S. 141.
Brooks *v.* Clark, 119 U. S. 513.
See also—
Barron *v.* Burnside, 121 U. S. 200.
Ducat *v.* Chicago, 10 Wall. 415.
Martin *v.* Baltimore, etc., R. Co., 151 U. S. 689.

The court held in The *Alicia* (7 Wall. 571) that it could not acquire jurisdiction of a prize cause through an order of a circuit court directing its transfer though authorized by express provision of an act of Congress, and that such provision must be regarded as an attempt, inadvertently made, to give the court a jurisdiction withheld by the Constitution.

Section 2.—JURISDICTION.

Clause 1.—EXTENT OF THE JUDICIAL POWER.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Con-

troversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Leading Cases

Chisholm *v.* Georgia (2 Dall. 419), being a suit by a citizen of South Carolina against the State of Georgia, out of which grew the eleventh amendment, and in connection with which see—

Poindexter *v.* Greenhow, 114 U. S. 270.
Reagan *v.* Farmers' Loan, etc., Co., 154 U. S. 362.
Tindal *v.* Wesley, 167 U. S. 204.
Smyth *v.* Ames, 169 U. S. 466.
Ex parte Young, 209 U. S. 123.
Hopkins *v.* Clemson College, 221 U. S. 636.
Lankford *v.* Platte Iron Works, 235 U. S. 461.
Osborn *v.* Bank, 9 Wheat. 738.
Hans *v.* Louisiana, 134 U. S. 1.

Cohens *v.* Virginia (6 Wheat. 264), in connection with which see Martin *v.* Hunter (1 Wheat. 304), upholding the constitutionality of sec. 25 of the judiciary act of 1789.

Cherokee Nation *v.* Georgia (5 Pet. 1), holding (p. 20) that "an Indian tribe or nation within the United States is not a foreign State, in the sense of the Constitution, and can not maintain an action in the courts of the United States." In connection with this case, see also—

Worcester *v.* Georgia, 6 Pet. 515.
Heckman *v.* U. S., 224 U. S. 413.

Luther *v.* Borden (7 How. 1), in which the court refused to express an opinion on political questions, and holding that when the President had recognized one of two opposing factions as the lawful State government in a case of domestic violence, his decision would not be questioned by the courts.

The law governing suits between States is fully discussed in Kansas *v.* Colorado (185 U. S. 125; 206 U. S. 46).

South Dakota *v.* North Carolina (192 U. S. 286) being a suit to compel payment of bonds, and in which a decree was entered ordering the payment thereof; Justices White, Fuller, McKenna, and Day dissenting.

As to suits between States relating to boundary disputes, see—

New Jersey *v.* New York, 5 Pet. 284.
Missouri *v.* Iowa, 7 How. 660.
Florida *v.* Georgia, 11 How. 293; 17 How. 478.
Alabama *v.* Georgia, 23 How. 505.

Virginia *v.* West Virginia, 11 Wall. 39.
South Carolina *v.* Georgia, 93 U. S. 4.
Indiana *v.* Kentucky, 136 U. S. 479.
Virginia *v.* Tennessee, 158 U. S. 267.
Louisiana *v.* Mississippi, 202 U. S. 1, 58.
Iowa *v.* Illinois, 147 U. S. 1; 202 U. S. 59.
Arkansas *v.* Tennessee, 246 U. S. 158.

For a suit involving a pecuniary demand, see—

Virginia *v.* West Virginia, 206 U. S. 290; 209 U. S. 514; 220 U. S. 1; 234 U. S. 117; 238 U. S. 202; 246 U. S. 565.

While the language of the Constitution conferring upon the Federal courts jurisdiction over suits between States is qualified, it has been held that not all controversies between States are justiciable in their nature.

Wisconsin *v.* Pelican Ins. Co. 127 U. S. 265.
Louisiana *v.* Texas, 176 U. S. 1.

In suits between States it must appear that the plaintiff State is not a mere cloak for the real party in interest.

New Hampshire *v.* Louisiana, 108 U. S. 76.

But a State may sue when the interest involved is that of a considerable number of its citizens rather than that of the State itself.

Missouri *v.* Illinois & Chicago Dist., 180 U. S. 208.

As to suits by the United States against a State, see—

U. S. *v.* North Carolina, 136 U. S. 211.
U. S. *v.* Texas, 143 U. S. 621.
U. S. *v.* Michigan, 190 U. S. 379.

As to suits by a State against the United States, see—

U. S. *v.* Lee, 106 U. S. 196.
Minnesota *v.* Hitchcock, 185 U. S. 373.
Oregon *v.* Hitchcock, 202 U. S. 60.
Kansas *v.* U. S., 204 U. S. 331.

In General

This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States. When any question respecting them is submitted by a party who asserts his rights in the form prescribed by law, it then becomes a "case" of which the Federal courts have cognizance. "Shall extend" is used in an imperative sense and imports an absolute grant of power. In thus defining the judicial power the Constitution contemplates the cases enumerated as being in three distinct classes. In the latter class, as to controversies, Congress may qualify the jurisdiction, either original or appellate, and the grant of jurisdiction over one of the classes does not confer any jurisdiction over either of the other two.

Robertson *v.* Baldwin, 165 U. S. 279.
Osborn *v.* Bank, 9 Wheat. 819.

Martin *v.* Hunter, 1 Wheat. 304.
The *Moses Taylor*, 4 Wall. 411.
American Ins. Co. *v.* Canter, 1 Pet. 545.

Congress is empowered to give the Federal courts jurisdiction over every case wherein a question within the judicial power is an ingredient. The questions involved in a case must determine its character in this respect; and if there are such as to bring the case within the judicial power, it is immaterial that other questions of law or fact are involved. So the judicial power extends to the trial of a revenue officer for an act done in the discharge of his duty; to a suit involving the rights of a railroad company as a corporation of the United States; to a suit by or against a national bank. In all such cases jurisdiction of the Federal courts may be made exclusive at the will of Congress.

Osborn *v.* Bank, 9 Wheat. 823.
Tennessee *v.* Davis, 100 U. S. 264.
Roberts *v.* Northern Pac. R. Co., 158 U. S. 22.
Petri *v.* Commercial Bank, 142 U. S. 648.
Ex parte Jones, 164 U. S. 692.
Martin *v.* Hunter, 1 Wheat. 337.
The *Glide*, 167 U. S. 615.

The judicial power is the instrument provided for administering security to an officer acting in the discharge of his duty; the power to declare what the law is. It covers every legislative act of Congress and is the final arbiter in matters involving the construction of the Constitution, and the Federal courts may be given by Congress power to construe every law with reference to its validity under the Constitution.

Hodgson *v.* Millward, 3 Grant's Cases (Pa.) 412.
Ex parte McCardle, 7 Wall. 514.
Ableman *v.* Booth, 21 How. 506.
Van Horne *v.* Dorrance, 2 Dall. 304.
Cohens *v.* Virginia, 6 Wheat. 264.
Smith *v.* Adams, 130 U. S. 174.
I. C. C. *v.* Brimson, 154 U. S. 475.

The jurisdiction of the Federal courts is exclusive over questions arising under treaties, where such questions are not political. As between the legislative and judiciary departments, however, so far as the provisions of a treaty can become the subject of judicial cognizance, they are subject to acts of Congress passed for their enforcement, modification, or repeal.

Wilson *v.* Wall, 6 Wall. 89.
Head Money Cases, 112 U. S. 580.

A court of the United States sitting as a court of equity is without jurisdiction of a suit to enjoin the prosecution of a proceeding to remove a State official from office.

Walton *v.* House of Representatives, 265 U. S. 487.

Definition

Jurisdiction is the power to hear and determine the subject matter in controversy between the parties to a suit; to adjudicate or exercise judicial power over it. It has reference to the

court's power over the parties; over the subject matter; over the property in contest; and to its authority to render judgment. An affirmative description of jurisdiction implies a negative on the exercise of power not comprehended within it. How jurisdiction shall be acquired, whether original or appellate, and the mode of procedure are left to the wisdom of the legislature; so Congress may give the Federal courts original jurisdiction in any case to which appellate jurisdiction extends, and may invest inferior Federal courts with jurisdiction over matters in which the Supreme Court has original, but not exclusive, jurisdiction, and lawfully provide for suits, at the option of the parties, on all controversies between citizens of different States.

U. S. *v.* Arredondo, 6 Pet. 709.
Rhode Island *v.* Massachusetts, 12 Pet. 718.
Grignon *v.* Astor, 2 How. 338.
Ex parte McCardle, 7 Wall. 514.
Windsor *v.* McVeigh, 93 U. S. 274.
Overby *v.* Gordon, 177 U. S. 220.
Cooper *v.* Reynolds, 10 Wall. 316.
Marbury *v.* Madison, 1 Cranch 173.
National Exch. Bank *v.* Peters, 144 U. S. 570.
Mayor *v.* Cooper, 6 Wall. 247.
Ames *v.* Kansas, 111 U. S. 469.
Gaines *v.* Fuentes, 92 U. S. 18.

Exercise of Jurisdiction as Dependent on Statutes

Supreme Court.—The Supreme Court alone possesses jurisdiction derived immediately from the Constitution, and of which the legislative power can not deprive it.

Stevenson *v.* Fain, 195 U. S. 167.
Ex parte Wisner, 203 U. S. 449.
U. S. *v.* Hudson, 7 Cranch 32.

Inferior courts.—The primary source of jurisdiction in the Federal courts is found in the Constitution, but it is directly conferred through the medium of Congress by grants thereof, and is conferred with such limitations and exceptions as the Congress shall prescribe when creating the courts and defining their authority.

Bankers Trust Co. *v.* Texas, etc., R. Co., 241 U. S. 295.
Kentucky *v.* Powers, 201 U. S. 24.
U. S. *v.* Eckford, 6 Wall. 488.
Kline *v.* Burke Constr. Co., 260 U. S. 226.

The jurisdiction of the circuit court is prescribed by laws enacted by Congress in pursuance of the Constitution and the Supreme Court by its rules has no power to increase or diminish the jurisdiction thus created though it may regulate its exercise in any manner not inconsistent with the laws of the United States.

Venner *v.* Great Northern R. Co., 209 U. S. 35.

See also—
Turner *v.* Bank, 4 Dall. 10.
Sheldon *v.* Sill, 8 How. 448.

Succession of courts for original and appellate jurisdiction

In Martin *v.* Hunter, 1 Wheat. 338, the court said:

> The exercise of appellate jurisdiction is far from being limited by the terms of the Constitution to the Supreme Court. There can be no doubt that Congress may create a succession of inferior tribunals, in each of which it may vest appellate as well as original jurisdiction. The judicial power is delegated by the Constitution in the most general terms, and may, therefore, be exercised by Congress under every variety of form of appellate or original jurisdiction. And as there is nothing in the Constitution which restrains or limits this power, it must therefore, in all other cases, subsist in the utmost latitude of which, in its own nature, it is susceptible.

See also—

Insurance Company *v.* Dunn, 19 Wall. 226.

Power to suspend sentence.—An order suspending during good behavior the execution of a sentence to imprisonment, in a case in which the sentence imposed is the minimum prescribed by statute for the offense charged, amounts to a refusal by the judicial power to perform a duty resting upon it and to an interference with both the legislative and executive authority as fixed by the Constitution.

Ex parte United States, 242 U. S. 27.

Jurisdiction not extended beyond limits of Constitution.—An act of Congress can not extend the jurisdiction beyond the limits of the Constitution, and a statute giving jurisdiction to the circuit courts in all suits in which an alien is a party is invalid.

Hodgson *v.* Bowerbank, 5 Cranch 303.
Owings *v.* Norwood, 5 Cranch 348.
Scott *v.* Sandford, 19 How. 401.

Mandamus.—Congress has power to authorize a circuit court to issue a *mandamus* in an original proceeding.

Knapp *v.* Lake Shore, etc., R. Co., 197 U. S. 542.
Kendall *v.* U. S., 12 Pet. 618.
McIntire *v.* Wood, 7 Cranch 504.

A circuit court of the United States has not the power to issue a writ commanding the Secretary of the Treasury to pay a territorial judge his salary for the unexpired term of his office from which he had been removed.

U. S. *v.* Guthrie, 17 How. 284.

Though the relief sought concerns an alleged right secured by the Constitution, a circuit court of the United States has no jurisdiction in original cases of *mandamus* until Congress shall otherwise provide.

Covington, etc., Brdg. Co. *v.* Hager, 203 U. S. 109.
Smith *v.* Alabama, 124 U. S. 478.

Cases and Controversies

In order that the judicial power may extend to a case arising under the Constitution or laws of the United States or a treaty,

it must be "a case in law or in equity" in which a right under such Constitution, law, or treaty is asserted in a court of justice. A suit in which a party seeks protection under a law is one arising under that law; and where the right of either party to a suit depends upon the validity of an act of Congress, the case is one arising under the Constitution. The construction of a treaty is deemed to be drawn into question for the purposes of Federal jurisdiction where the issue is as to whether an act done or omitted was in conformity to the treaty. But the case must really and substantially involve a question contemplated by this clause; the mere controverting a right or disputing an act is not necessarily sufficient.

Cohens *v.* Virginia, 6 Wheat. 379.
Minnesota Co. *v.* St. Paul Co., 2 Wall. 634.
Railroad Co. *v.* Mississippi, 102 U. S. 140.
Patton *v.* Brady, 184 U. S. 611.
Smith *v.* Maryland, 6 Cranch 304.
Bier *v.* McGehee, 148 U. S. 141.
Western Union *v.* Ann Arbor R. Co., 178 U. S. 239.
Gableman *v.* Peoria, etc., R. Co., 179 U. S. 339.
Ferry *v.* King County, 141 U. S. 673.

The jurisdiction of the Federal courts is commensurate with every right and duty created, declared, or necessarily implied by and under the Federal Constitution and laws. A "case" is a question contested before a court of justice, and a case "in law" or "equity" consists in the right of one party as well as of the other, and it "arises" when its correct decision depends on the construction of the Constitution or laws of the United States. It is a suit instituted according to the regular course of judicial procedure. The interests of the parties must be adverse; the clause does not contemplate suits merely to determine abstract principles. It is limited to such suits as are between parties and are of a judicial nature, and does not include purely political questions. When the subject of a controversy is political, that is, where it involves a question purely governmental, the courts can not take cognizance of it.

Irvine *v.* Marshall, 20 How. 564.
Martin *v.* Hunter, 1 Wheat. 352.
Cohens *v.* Virginia, 6 Wheat. 407.
Ex parte Milligan, 4 Wall. 113.
Ex parte Carll, 106 U. S. 522.
Marbury *v.* Madison, 1 Cranch 138.
Owings *v.* Norwood, 5 Cranch 348.
Wood-Paper Co. *v.* Heft, 8 Wall. 336.
Foster *v.* Mansfield etc., R. Co. 146 U. S. 101.
Luther *v.* Borden, 7 How. 1.
U. S. *v.* Ferreira, 13 How. 40.
Craig *v.* Missouri, 4 Pet. 438.
Cherokee Nation *v.* Georgia, 5 Pet. 20.
Boynton *v.* Blaine, 139 U. S. 326.
In re Cooper, 143 U. S. 503.
Georgia *v.* Stanton, 6 Wall. 71.
Muskrat *v.* U. S., 219 U. S. 346.

If a proceeding involves a right which in its nature is susceptible of judicial determination, and if the determination of it is not simply ancillary or advisory, but is the final and indisputable basis of action by the parties, it is a "case" within the meaning of this provision.

La Abra Mining Co. *v.* U. S., 175 U. S. 457.

It is apparent upon the face of this clause that in one class of cases the jurisdiction of the Federal courts depends on the character of the cause, whoever may be the parties, and in the other on the character of the parties, whatever may be the subject of controversy.

U. S. *v.* Texas, 143 U. S. 643.

The use of the word "controversies" as in contradistinction to the word "cases" and the omission of the word "all" in respect of controversies, left it to Congress to define the controversies over which the courts it was empowered to ordain and establish might exercise jurisdiction and the manner in which this was to be done.

Stevenson *v.* Fain, 195 U. S. 167.

In Law and Equity

In General

Cases at law, under the Constitution, are those suits in which legal rights are ascertained and determined, in contradistinction to those where equitable rights alone are recognized and equitable rights administered. Equity cases are those suits in which relief is sought according to the principles and practice of the equity jurisdiction as established in English jurisprudence. A case can be considered only when the subject matter is submitted in the form prescribed by law, and the record must show not only that some law or treaty or right under the Constitution is drawn into question but that such law or treaty or constitutional right is substantially involved. The validity of a statute is not drawn into question every time rights claimed under that statute are controverted, nor is the validity of an authority drawn into question every time an act done under such authority is disputed, and a suit to enforce a right or title taking its origin from United States laws is not necessarily such as Federal courts may entertain regardless of citizenship.

Parsons *v.* Bedford, 3 Pet. 447.
Fenn *v.* Holme, 21 How. 486.
Irvine *v.* Marshall, 20 How. 565.
Strother *v.* Lucas, 6 Pet. 768.
Parish *v.* Ellis, 16 Pet. 453.
Bennett *v.* Butterworth, 11 How. 669.
Sheirburn *v.* De Cordova, 24 How. 423.
Robinson *v.* Campbell, 3 Wheat. 212.
Lawler *v.* Walker, 14 How. 149.
Mills *v.* Brown, 16 Pet. 525.
Railroad Co. *v.* Rock, 4 Wall. 180.
Ryan *v.* Thomas, 4 Wall. 603.

La Abra Mining Co. *v.* U. S., 175 U. S. 455.
Gableman *v.* Peoria, etc., R. Co., 179 U. S. 339.
Ferry *v.* King County, 141 U. S. 673.
Shoshone Min. Co. *v.* Rutter, 177 U. S. 507.

In actions at law the general practice is to try all the issues in a case at one time, and it is only in exceptional instances that distinct causes of action asserted in the same case may be made the subjects of separate trials.

Miller *v.* American Bonding Co., 257 U. S. 304.

In Fairchild *v.* Hughes (258 U. S. 126), which was a proceeding to have the Nineteenth Amendment declared void, the court said: "In form it is a bill in equity; but it is not a case" within the meaning of this section.

A suit by an individual or by a State, as *parens patriæ*, to restrain the enforcement of an act of Congress authorizing appropriations of public money, upon the ground that the act is invalid, can not be entertained in equity.

Massachusetts *v.* Mellon, 262 U. S. 447.

Distinction Between Law and Equity

In creating and defining the judicial power of the General Government the situation establishes the distinction between law and equity; and a party who claims a legal title must proceed according to the forms of practice in such cases in the State court. But if the claim is an equitable one, he must proceed according to rules which have been prescribed by the United States Supreme Court regulating proceedings in equity in the courts of the United States.

Bennett *v.* Butterworth, 11 How. 674.
See also—
Fenn *v.* Holme, 21 How. 484.
Thompson *v.* Central Ohio R. Co., 6 Wall. 137.
McFaul *v.* Ramsey, 20 How. 525.
Gibson *v.* Chouteau, 13 Wall. 102.
Eberly *v.* Moore, 24 How. 158.
In re Sawyer, 124 U. S. 200.
Ellis *v.* Davis, 109 U. S. 485.
Ex parte Boyd, 105 U. S. 648.

Uniform Equity Jurisdiction in All the States

The equity jurisdiction of the courts of the United States is derived from the Constitution and laws of the United States. Their powers and rules of decision are the same in all the States. Their practice is regulated by themselves and by rules established by the Supreme Court.

Noonan *v.* Lee, 2 Black 509.

As the courts of the Union have a chancery jurisdiction in every State, and the judiciary act confers the same chancery powers on all and gives the same rule of decision, its jurisdiction in one State must be the same as in other States.

U. S. *v.* Howland, 4 Wheat. 115.
Neves *v.* Scott, 13 How. 272.

According to Jurisdiction of the High Court of Chancery of England

The equity jurisdiction conferred on the Federal courts is the same that the high court of chancery in England possesses.

The usages of that court, whenever the jurisdiction is exercised, govern the proceedings. This may be said to be the common law of chancery, and since the organization of the Government it has been observed.

Pennsylvania *v.* Wheeling, etc., Brdg. Co., 13 How. 563.
Payne *v.* Cook, 7 Wall. 430.

Right of Trial by Jury Preserved by Seventh Amendment

The distinction of jurisdiction between law and equity is constitutional to the extent to which the seventh amendment forbids any infringement of the right of trial by jury as fixed by common law.

Root *v.* Lake Shore, etc., R. Co., 105 U. S. 206.
Ellis *v.* Davis, 109 U. S. 497.

For Discovery of Assets of Judgment Debtor

A proceeding for the discovery of the assets of a judgment debtor in aid of an execution at law provided for by State statute and applied under section 916, Revised Statutes, is not in conflict with this clause, which preserves and establishes the distinction between relief at law and in equity.

Ex parte Boyd, 105 U. S. 647.

Suits Relating to Estates of Decedents

As authority to make wills is derived from the State and the requirement of probate is but a regulation to make them effective, matters of pure probate are not within the jurisdiction of United States courts.

Ellis *v.* Davis, 109 U. S. 485.
Farrell *v.* O'Brien, 199 U. S. 89.
Garzot *v.* de Rubio, 209 U. S. 283.
Waterman *v.* Canal-Louisiana Bank, 215 U. S. 33.

Constitution, Laws, and Treaties

In General

Under the Constitution the judicial power of the General Government is vested in one Supreme Court and in such inferior courts as Congress shall from time to time ordain and establish. Every court of the United States, therefore, must derive its jurisdiction and judicial authority from the Constitution or the laws of the United States.

Jecker *v.* Montgomery, 13 How. 498.

As Dependent on Construction

A case arising under the Constitution and laws of the United States is not merely one where a party comes into court to demand something conferred upon him by the Constitution or by a law or treaty. A case consists of the right of one party as well as of the other and may truly be said to arise under the Consti-

tution or a law or a treaty of the United States whenever its correct decision depends upon the construction of either. Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege or claim or protection or defense of the party, in whole or in part, by whom they are asserted.

Tennessee *v.* Davis, 100 U. S. 264.

The construction of treaties is the peculiar province of the judiciary and, except in cases purely political, Congress has no constitutional power to settle the rights under a treaty or to affect titles already granted by the treaty itself.

Jones *v.* Meehan, 175 U. S. 32.

Jurisdiction as Affected by Parties

This clause extends the jurisdiction of the court to all the cases described without making in its terms any exception and without any regard to the condition of the party, and a case in law or in equity arises under the Constitution or a law of the United States whenever its correct decision depends on the construction of either.

Cohens *v.* Virginia, 6 Wheat. 378.
Pennoyer *v.* McConnaughy, 140 U. S. 1.
U. S. *v.* Louisiana, 123 U. S. 32.
Railroad Co. *v.* Mississippi, 102 U. S. 135.

This section does not confer upon the Federal courts jurisdiction of suits against a State by a citizen thereof, brought without the State's consent, involving questions arising under the Constitution.

Hans *v.* Louisiana, 134 U. S. 1.
North Carolina *v.* Temple, 134 U. S. 22.
Fitts *v.* McGhee, 172 U. S. 516.

Nor does it give jurisdiction over an action against a State by a corporation created by Congress, although the eleventh amendment in terms prohibits actions against a State only "by citizens of another State, or by citizens or subjects of any foreign State."

Smith *v.* Reeves, 178 U. S. 436.

Civil and Criminal Cases

Provision that the judicial power shall "extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority," embraces alike civil and criminal cases arising under the Constitution and laws. Both are equally within the dominion of the judicial powers of the United States, and there is nothing in the grant to justify an assertion that whatever power may be exerted over a civil case may not be exerted as fully over a criminal one.

Tennessee *v.* Davis, 100 U. S. 264.

Rights and Obligations Conferred and Imposed by Act of Congress

An act of Congress authorizing a suit to be brought about matters arising under an act of Congress which chartered a railroad company and conferred on it certain rights and benefits and imposed on it certain obligations is a subject of which Congress may give the Federal courts jurisdiction.

U. S. *v.* Union Pac. R. Co., 98 U. S. 602.

When Involved in Trial in State Court

When the right of action, in a case brought in a State court, is based on an act of Congress, the suit is one arising under the laws of the United States, and, under the acts of Congress, the Supreme Court of the United States may review the decision of the State court on the Federal question raised.

St. Louis, etc., R. Co. *v.* Taylor, 210 U. S. 281.

When Other Questions of Fact or Law are Involved

When a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is in the power of Congress to give the circuit courts jurisdiction of that cause, although other questions of fact or of law may be involved in it.

Osborn *v.* Bank, 9 Wheat. 821.

See also—

Whelan *v.* New York, 35 Fed. 859, citing Gordon *v.* Longest, 16 Pet. 104; Barney *v.* Latham, 103 U. S. 205.

Suit to Set Aside a Patent for Land

The Attorney General has the right to institute, in the name of the United States, a suit to abrogate, annul, or set aside a patent for land which has been issued by the Government in a case where such an instrument, if permitted to stand, would work serious injury to the United States and prejudice its interest and where it has been obtained by fraud, imposture, or mistake.

U. S. *v.* San Jacinto Tin Co., 125 U. S. 285.
U. S. *v.* Beebe, 127 U. S. 343.

Domestic Relations

The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States. The right to possession and control of a child, as contested by its father and grandfather, is one in regard to which neither Congress nor any authority of the United States has any special jurisdiction, when whether the one or the other is entitled to the possession does not depend upon any act of Congress or any treaty of the United States or its Constitution.

In re Barrus, 136 U. S. 593.

Where there was a divorce in New York *a mensa et thoro*, and the husband removed to Wisconsin, the domicile of the wife remained unchanged, not following that of the husband.

Barber *v.* Barber, 21 How. 582.

Where a citizen's wife has justifiedly left him and removed to another State, with no intention of living elsewhere, she acquired a domicile in such State, so that she may maintain an action in the Federal courts against a citizen of the State in which her husband resides.

Williamson *v.* Osenton, 232 U. S. 619.

Common-Law Jurisdiction

The courts of the United States have no jurisdiction of offenses at common law. Suits in which relief is sought according to the principles and practice of equity jurisdiction are "cases in equity," and the equity jurisdiction is the same as that of the high court of chancery in England. The true test is whether there is a plain, adequate, and complete remedy at law in the same court.

Ex parte Bollman, 4 Cranch 75.
Turner *v.* Bank, 4 Dall. 10.
U. S. *v.* Wiltberger, 5 Wheat. 104.
Manchester *v.* Massachusetts, 139 U. S. 262.
Robinson *v.* Campbell, 3 Wheat. 212.
U. S. *v.* Howland, 4 Wheat. 108.
Sheffield Furnace Co. *v.* Witherow, 149 U. S. 574.
Mississippi Mills *v.* Cohn, 150 U. S. 202.
Boyce *v.* Grundy, 3 Pet. 215.
Gaines *v.* Chew, 2 How. 619.
Williams *v.* Benedict, 8 How. 107.

There is no common law of the United States, in the sense of a national customary law, distinct from the common law of England as adopted by the several States each for itself, applied as its local law, and subject to such alteration as may be provided by its own statutes.

U. S. *v.* Eaton, 144 U. S. 687.
Benson *v.* McMahon, 127 U. S. 466.
U. S. *v.* Britton, 108 U. S. 206.
U. S. *v.* Worrall, 2 Dall. 384.

Common law in criminal cases can not be exercised by the Federal courts.

In U. S. *v.* Hudson, 7 Cranch 34, the court said:

To fine for contempt, imprison for contumacy, enforce the observance of order, &c., are powers which can not be dispensed with in a court, because they are necessary to the exercise of all others; and so far our courts no doubt possess powers not immediately derived from statute, but all exercise of criminal jurisdiction in common-law cases, we are of opinion, is not within their implied powers.

See also—

U. S. *v.* Coolidge, 1 Wheat. 415.

Courts which originate in the common law possess a jurisdiction which must be regulated by the common law until some statute shall change their established principles; but courts which are created by written law and whose jurisdiction is defined by written law can not transcend that jurisdiction.

Ex parte Bollman, 4 Cranch 93.

Function of Parens Patriæ in Relation to Minors

There is not vested in the United States Government a common-law prerogative; a circuit court, upon the footing of common-law prerogative, by writ of *habeas corpus*, can not assume to exercise the function of *parens patriæ* in relation to infant children held in detention by private individuals not acting under color of authority from the laws of the United States.

In re Barry (42 Fed. 113) writ of error dismissed in Barry *v.* Mercein (5 How. 103), on the ground that such a controversy related to a matter which is incapable of being reduced to any pecuniary standard of value, and the court, under the act of Congress, had no appellate jurisdiction. But see U. S. *v.* Green (3 Mason [U. S.] 482), in which Justice Story took jurisdiction of such a case.

Ambassadors and Consuls, etc.

The judicial power extends to all cases affecting ambassadors and consuls notwithstanding they are not parties to the record. The jurisdiction of circuit courts over a controversy between a citizen and an alien is not defeated because the alien is the consul of a foreign government, and citizens of the United States, although consuls of foreign nations may be sued in the district court where they are not received as diplomatic agents, though they be acting for the minister in his absence. The constitutional grant of original jurisdiction to the Supreme Court of cases affecting ambassadors and consuls is not exclusive, and subordinate Federal courts may be invested with jurisdiction in such cases.

Osborn *v.* Bank, 9 Wheat. 738.
U. S. *v.* Ortega, 11 Wheat. 467.
Bors *v.* Preston, 111 U. S. 261.
In re Baiz, 135 U. S. 425.
Cunningham *v.* Rodgers, 257 U. S. 466.

Admiralty and Maritime Cases[1]

In General

Jurisdiction is conferred on the Federal courts in admiralty because, as the seas are the joint property of the nations, the jurisdiction is essentially national and because of their nature such cases are closely connected with the grant of the commerce power. The jurisdiction is not restricted to admiralty, but includes all maritime jurisdiction. The constitutional provision for Federal jurisdiction refers to a system of law operating uniformly in the whole country, and regard must be had to our legal history, Constitution, legislation, customs, and adjudications. The admiralty jurisdiction was not intended to be as limited as it was in England

[1] See " Relation of Admiralty and Maritime Jurisdiction " to Commerce Clause, p. 89.

at the time of the adoption of the Constitution, and it was to guard against a narrow construction of the word "admiralty" that "maritime" was added.

Chisholm *v.* Georgia, 2 Dall. 475.
New Jersey Nav. Co. *v.* Merchants' Bank, 6 How. 392.
The *Lottawanna*, 21 Wall. 575.
The *St. Lawrence*, 1 Black 522.
Waring *v.* Clarke, 5 How. 441.
Fretz *v.* Bull, 12 How. 466.
See also—
The *Genesee Chief v.* Fitzhugh, 12 How. 458.
Ex parte Easton, 95 U. S. 72.
The Louisville Underwriters, 134 U. S. 493.
The *Hine v.* Trevor, 4 Wall. 555.
The *Moses Taylor*, 4 Wall. 411.

The courts of admiralty are not bound by the strict rules of the common law, but act upon enlarged principles of equity. The jurisdiction, while granted partly because of its close alliance to the commerce power, is nevertheless independent of that power. The whole subject belongs exclusively to the Federal Government. The exercise of the jurisdiction by the inferior Federal courts is dependent upon congressional legislation, and Congress may limit or control it, or modify the practice. But the jurisdiction can not be enlarged by any law or rule of court. The term includes jurisdiction of all things done upon and relating to the sea and for damages for injuries on the high seas, the subject matter in cases of contract and the locality in cases of tort being the true tests of jurisdiction.

The *Virgin*, 8 Pet. 550.
The *Genesee Chief v.* Fitzhugh, 12 How. 443.
U. S. *v.* Bevans, 3 Wheat. 389.
Martin *v.* Hunter, 1 Wheat. 304.
Jackson *v.* The *Magnolia*, 20 How. 296.
Carpenter *v.* The *Emma Johnson*, 1 Cliff. 633.
The *Lottawanna*, 21 Wall. 577.
The Steamer *St. Lawrence*, 1 Black 526.
Bingham *v.* Cabot, 3 Dall. 33.
Waring *v.* Clarke, 5 How. 452.
The *Western Maid*, 257 U. S. 419.
See also—
Oakes *v.* U. S., 174 U. S. 790.
O'Brien *v.* Miller, 168 U. S. 287.
The *Belfast*, 7 Wall. 624.
In re Garnett, 141 U. S. 1.
American Ins. Co. *v.* Canter, 1 Pet. 511.
Moran *v.* Sturges, 154 U. S. 276.
The *City of Panama*, 101 U. S. 457.
Butler *v.* Boston S. S. Co., 130 U. S. 557.
Janney *v.* Columbian Ins. Co., 10 Wheat. 418.
Manro *v.* Almeida, 10 Wheat. 486.
Wills *v.* Sears, 1 Black 108.
The *Barnstable*, 181 U. S. 467.
New Jersey Nav. Co. *v.* Merchants' Bank, 6 How. 392.

In extending the judicial power of the United States to "all cases of admiralty and maritime jurisdiction," this section, by implication, made the admiralty and maritime law the law of

the United States, subject to power in Congress to alter, qualify, or supplement it as experience or changing conditions might require. This power of Congress extends to the entire subject, substantive and procedural, and permits of the exercise of a wide discretion, though subject to well-recognized limitations, one of which is that there are boundaries to the maritime law and admiralty jurisdiction which can not be altered by legislation, and another, that the enactments, when not relating to matters whose existence or influence is confined to a more limited field, shall be coextensive with and operate uniformly in the whole United States.

Panama R. R. Co. *v.* Johnson, 264 U. S. 375.
Farrell *v.* Waterman S. S. Co., 291 Fed. 604.
The Nanking, 292 Fed. 642.

The jurisdiction is not confined to the high seas, but extends to the navigable lakes and rivers of the United States, regardless of the ebb and flow of the tides. The grant does not operate to extend control over waters ceded to the several States and does not affect general State jurisdiction over State waters. The power of the States to regulate their fisheries was not surrendered by the grant of admiralty and maritime jurisdiction.

The *Genesee Chief v.* Fitzhugh, 12 How. 454.
Jackson *v.* The *Magnolia*, 20 How. 301.
U. S. *v.* Bevans, 3 Wheat. 387.
Smith *v.* Maryland, 18 How. 76.
See also—
Fretz *v.* Bull, 12 How. 468.
The *Eagle*, 8 Wall. 20.
Ex parte Boyer, 109 U. S. 632.
In re Garnett, 141 U. S. 15.
Steamboat Co. *v.* Chase, 16 Wall. 531.
Manchester *v.* Massachusetts, 139 U. S. 261.

One admiralty court has jurisdiction of a libel to carry into effect the decree of another admiralty court; and it seems that, on such libel, the grounds of the decree can not be inquired into; such decree, in *rem*, being conclusive on all the world.

Panhallow *v.* Doane, 3 Dall. 54.

The admiralty jurisdiction can only be exercised under the laws of the United States, and rests on the grant in the Constitution and the terms in which that grant is extended to the respective courts of the United States.

Janney *v.* Columbian Ins. Co. 10 Wheat. 418.
Manro *v.* Almeida, 10 Wheat. 438.
See also—
U. S. *v.* Coombs, 12 Pet. 72.
Atkins *v.* Disentegrating Company, 18 Wall. 302.
The *Francis Wright*, 105 U. S. 381.

The maritime usages of foreign countries are not obligatory upon the courts of the United States, and will not be respected as authority, except so far as they are consonant with the well-settled principles of English and American jurisprudence.

The *Elfrida*, 172 U. S. 186.
Watts *v.* Camors, 10 Fed. 145, affirmed 115 U. S. 353.

Cases Between Foreigners and Against Foreign Vessels

The admiralty courts of this country may afford redress for a breach of a contract of affreightment, notwithstanding the ship is a foreign one, and the contract was made and was to be performed in foreign countries.

The *Maggie Hammond*, 9 Wall. 435.

The courts of the United States have jurisdiction in admiralty when the litigants are of different foreign nationalities and the case having arisen on the high seas is one *communis juris*.

The *Belgenland*, 114 U. S. 355.

A public vessel of war of a foreign nation at peace with the United States, coming into our ports and demeaning herself in a friendly manner, is not amenable to process of our courts.

The Exchange *v.* McFaddon, 7 Cranch 116.

Admiralty has jurisdiction of an action between parties who are foreigners where the parties consent to the jurisdiction.

The *Blaireau*, 2 Cranch 264.
Ex parte Newman, 14 Wall. 152.
Ex parte Transportes Maritimos, 264 U. S. 105.

The admiralty jurisdiction exercised by the consuls of France in the United States was not of right. Such jurisdiction can only be exercised by virtue of a treaty.

The *Betsey*, 3 Dall. 6.

What Are Admiralty and Maritime Cases

The subject matter of a transaction or the locality of an act done determines the character of the particular case, but jurisdiction over the case does not constitute the case itself. The citizenship of the parties to the cause is of no moment in determining jurisdiction; but one having a right to enforce a lien in admiralty may waive the lien and sue in *personam* if the citizenship of the parties is diverse, the suit thus ceasing to be one cognizable in a court of admiralty. The jurisdiction extends to all maritime contracts, and all torts committed on navigable waters. But in matters of contract the jurisdiction of courts of admiralty is limited to those, and those only, which are maritime.

Waring *v.* Clarke, 5 How. 452.
American Ins. Co. *v.* Canter, 1 Pet. 545.
Peyroux *v.* Howard, 7 Pet. 324.
Norton *v.* Switzer, 93 U. S. 356.
Johnson *v.* Chicago, etc., Ele. Co., 119 U. S. 397.
Sheppard *v.* Taylor, 5 Pet. 711.
The Steamboat *Orleans*, 11 Pet. 183.
See also—
The *General Smith*, 4 Wheat. 443.
The *Thomas Jefferson*, 10 Wheat. 428.
Leon *v.* Galceran, 11 Wall. 188.
Andrews *v.* Wall, 3 How. 572.
People's Ferry Co. *v.* Beers, 20 How. 401.
Ex parte Easton, 95 U. S. 72.
The *Resolute*, 168 U. S. 439.

A bond given to secure the performance of a maritime contract is itself a maritime contract enforceable in admiralty; as also is a bottomry bond; but a mere mortgage of a ship, other than that of an hypothecated bottomry, is not such a contract. A contract to build a ship or to furnish materials for that purpose is not maritime, and so a lien based upon a contract is not enforceable in admiralty; but a contract to repair a ship is maritime and a lien may be enforced, unless the repairs were made in the vessel's home port, when the enforcement of the lien will depend upon its existence under local law. An agreement of consortship may be enforced in admiralty; also a contract of affreightment; of wharfage; of pilotage; of marine insurance. A partnership agreement between owners of a vessel or a charter is not a maritime contract, and admiralty can not entertain an action for an accounting under such an agreement. Admiralty has jurisdiction of a suit to recover a seaman's wages, both in *rem* and in *personam*. A contract for services, such as are usually performed by a ship's brokers and business agents, and performed on land, is not, however, a maritime contract.

Haller v. Fox, 51 Fed. 298.
The *Charles Carter*, 4 Cranch 332.
Bogart *v.* Steamboat, 17 How. 402.
Roach *v.* Chapman, 22 How. 132.
The *Aurora*, 1 Wheat. 105.
Andrews *v.* Wall, 3 How. 571.
Morewood *v.* Enequist, 23 How. 493.
Hobart *v.* Drogan, 10 Pet. 120.
Croudson *v.* Leonard, 4 Cranch 437.
Ward *v.* Thompson, 22 How. 333.
Sheppard *v.* Taylor, 5 Pet. 711.
The *Humboldt*, 86 Fed. 351.

See also—

The *J. E. Rumbell*, 148 U. S. 15.
Edwards *v.* Elliott, 21 Wall. 556.
New Jersey Nav. Co. *v.* Merchants' Bank, 6 How. 391.
The *Glide*, 167 U. S. 624.
The *Eddy*, 5 Wall. 494.
Ex parte McNiel, 13 Wall. 242.
Ex parte Hagar, 104 U. S. 521.
Insurance Company *v.* Dunham, 11 Wall. 31.
Grant *v.* Poillon, 20 How. 169.

The jurisdiction extends to actions of tort committed on navigable waters, without reference to the voyage or destination of the vessel. It depends solely upon the commission of the wrongful act upon navigable water. A case of collision is a marine tort, and admiralty has jurisdiction of a suit for an injury caused to a vessel by running upon a sunken obstruction. Where, however, the substance and consummation of the wrong takes place on land and not upon the water admiralty has no jurisdiction. Where the injury consists in setting buildings on fire from a passing vessel a suit can not be maintained in admiralty. To be cognizable in admiralty a tort need not arise on

the high seas nor upon the navigable waters of the United States; it may even originate in a foreign port and be the subject of an action in United States courts.

Philadelphia, etc., R. Co. *v.* Towboat Co, 23 How. 215.
Lathers *v.* Blessing, 105 U. S. 626.
In re Garnett, 141 U. S. 16.
The *Belfast*, 7 Wall. 637.
The *Hine v.* Trevor, 4 Wall. 568.
Panama R. Co. *v.* Napier, etc., Co., 166 U. S. 285.
Johnson *v.* Chicago, etc., Ele. Co., 119 U. S. 397.
Ex parte Phoenix Ins. Co., 118 U. S. 616.
In re Fassett, 142 U. S. 479.

An injury to a passenger from a boiler explosion is a maritime tort. In the absence, however, of some statute, State or Federal, a court of admiralty can not entertain an action for the death of a person caused by another's negligence on the high seas, and even where a local statute permits an action, admiralty can not entertain a libel in *rem* if the statute gives no lien. Every violent dispossession of property on the seas is *prima facie* a maritime tort, but admiralty jurisdiction is not confined to torts committed by direct force; it extends to torts of negligence and malfeasance.

The *New World v.* King, 16 How. 469.
The *Harrisburg*, 119 U. S. 214.
The *Corsair*, 145 U. S. 343.
L'Invincible, 1 Wheat. 257.
Philadelphia, etc., R. Co. *v.* Towboat Co., 23 How. 215.
The *Alaska*, 130 U. S. 209.
Butler *v.* Boston S. S. Co., 130 U. S. 555.

In Western Fuel Co. *v.* Garcia (257 U. S. 233) the court said:

> It is established doctrine that no suit to recover damages for the death of a human being caused by negligence, may be maintained in the admiralty courts of the United States under the general maritime law. At the common law no civil action lies for an injury resulting from death. The maritime law as generally accepted by maritime nations leaves the matter untouched and in practice each of them has applied the same rule for the sea which it maintains on land.

Maritime Contracts, Torts, and Crimes

In general.—The admiralty jurisdiction, in cases of contract, depends primarily upon the nature of the contract, and is limited to contracts, claims, and services, purely maritime, and touching rights and duties appertaining to commerce and navigation.

People's Ferry Co. *v.* Beers, 20 How. 401.
See also—
The Steamboat *Thomas Jefferson*, 10 Wheat. 429.
New Jersey Steam Nav. Co. *v.* Merchants' Bank, 6 How. 378.
Andrews *v.* Wall, 3 How. 572.

Admiralty jurisdiction rests upon the grant in the Constitution. The courts of the United States proceeding as courts of admiralty and maritime jurisdiction have jurisdiction in cases of maritime courts in *personam* as well as in *rem*.

Manro *v.* Almeida, 10 Wheat. 493.
Atlantic Transport Co. *v.* Imbrovek, 234 U. S. 52.
Panama R. R. Co. *v.* Johnson, 264 U. S. 375.

The general doctrine is that in contract matters admiralty jurisdiction depends upon the nature of the transaction, and in tort matters upon the locality.

Grant Smith-Porter Co. *v.* Rohde, 257 U. S. 469.
New Bedford Co. *v.* Purdy, 258 U. S. 96.

The courts of the United States, merely by virtue of this grant of judicial power, and in the absence of legislation by Congress, have no criminal jurisdiction whatever. The criminal jurisdiction of the courts of the United States is wholly derived from the statutes of the United States.

Manchester *v.* Massachusetts, 139 U. S. 262.

Collisions.—The courts of the United States have admiralty jurisdiction over cases of collision occurring upon navigable waters, though within the body of a county, and far above the flux and reflux of the tide.

Jackson *v.* The *Magnolia*, 20 How. 296.
See also—
Nelson *v.* Leland, 22 How. 48.
The Propeller *Commerce*, 1 Black 574.
The *Eagle*, 8 Wall. 15.
St. John *v.* Paine, 10 How. 557, Justice Daniel dissenting.
Newton *v.* Stebbins, 10 How. 586, Justice Daniel dissenting.
The *Belgenland*, 114 U. S. 355.
Workman *v.* New York, 179 U. S. 552.
Martin *v.* West, 222 U. S. 191.
Ex parte Gordon, 104 U. S. 515.
Ex parte Ferry Co., 104 U. S. 519.
The *Alaska*, 130 U. S. 201.
Old Dominion S. S. Co. *v.* Gilmore, 207 U. S. 398.

Contribution and general average.—A court of admiralty has jurisdiction of a libel brought by one of two vessels, which were both adjudged to be in fault for a collision, to enforce contribution of account of its payment of the entire damage to the cargo of the other vessel.

Erie R. Co. *v.* Erie Transp. Co., 204 U. S. 220.
The *Ira M. Hedges*, 218 U. S. 264.

Where a vessel was run on shore by the captain, in order to save the lives of those on board, and for the preservation of the cargo, by which act the vessel was totally lost, but the cargo saved and delivered to the consignee, it was held that a libel in *personam*, filed by the owner of the vessel against the consignee of the cargo, for a contribution by way of general average, could not be sustained in the admiralty courts of the United States.

Cutler *v.* Rae, 7 How. 729.

Exclusiveness of Jurisdiction

The maritime and admiralty jurisdiction conferred by the Constitution and laws of the United States upon the district courts of the United States is exclusive.

The *Glide*, 167 U. S. 623.

The exclusive jurisdiction in admiralty cases was conferred on the National Government, as closely connected with the grant

of the commercial power. It is a maritime court instituted for the purpose of administering the law of the seas. There seems to be ground, therefore, for restraining its jurisdiction, in some measure, within the limit of the grant of the commercial power, which would confine it, in cases of contracts, to those concerning the navigation and trade of the country upon the high seas and tide waters with foreign countries, and among the several States.

New Jersey Steam Nav. Co. *v.* Merchants' Bank, 6 How. 392.

See also—

Steamboat Co. *v.* Chase, 16 Wall. 522.

The *Betsey*, 3 Dall. 6.

Concurrent Jurisdiction at Common Law

Wherever the district courts of the United States have original cognizance of admiralty causes by virtue of an act of Congress, that cognizance is exclusive with the exception always of such concurrent remedy as is given by the common law.

The *Hine v.* Trevor, 4 Wall. 555.

The *Moses Taylor*, 4 Wall. 430.

Waring *v.* Clarke, 5 How. 459.

As Understood at Time Constitution Adopted

The true limits of admiralty and maritime jurisdiction can only be ascertained by reference to what cases were cognizable in the maritime courts when the Constitution was formed. What was reserved to the States to be regulated by their own institutions can not be rightfully infringed by the General Government, either through its legislative or its judicial departments.

People's Ferry Co. *v.* Beers, 20 How. 401.

State Workmen's Compensation Act

Congress exceeded its constitutional power to legislate concerning rights and liabilities within the maritime jurisdiction, and remedies for their enforcement, by attempting as it did in the act of October 6, 1917, to permit the application of workmen's compensation laws of the several States to injuries within the admiralty and maritime jurisdiction, thus virtually destroying the harmony and uniformity which the Constitution not only contemplated but actually established.

Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149 (Justices Holmes, Pitney, Brandeis, and Clark, dissenting).

See also—

In re Garnett, 141 U. S. 12.

Grant Smith-Porter Co. *v.* Rohde, 257 U. S. 469.

Washington *v.* Dawson Co., 264 U. S. 219.

A State workmen's compensation act can not be applied to the case of a stevedore who met accidental death while engaged in his work, which employment was a maritime contract.

Southern Pac. Co. *v.* Jensen, 244 U. S. 205.

Statute making remedy for death given by State workmen's compensation laws exclusive held ineffective to deprive court of admiralty of jurisdiction.

Bloom *v.* Furness-Withy & Co., 293 Fed. 98.

Act making remedy under State law exclusive in maritime cases held unconstitutional, as limiting jurisdiction of courts.

The *Mercedes de Larrinaga*, 293 Fed. 251.

Act of June 10, 1922, by providing that rights and remedies given by State compensation laws for injuries to or death of persons other than seamen shall be exclusive, held unconstitutional in so far as it excludes from the jurisidiction of the District courts actions for injuries to stevedores.

Farrell *v.* Waterman S. S. Co., 286 Fed. 284.

The provision of Judicial Code, sec. 24, subd. 3, as amended by act of June 10, 1922, purporting to exclude from the jurisdiction of courts of admiralty certain cases where they are within the purview of a State workmen's compensation law, is beyond the power of Congress under this section.

The Canadian Farmer, 290 Fed. 601.

Liens for Repairs and Supplies

For necessary repairs or supplies furnished to a vessel in a foreign port, a lien is given by the general maritime law, following the civil law, and may be enforced in admiralty.

The *General Smith*, 4 Wheat. 438.
The *St. Jago de Cuba*, 9 Wheat. 409.
The *Virgin*, 8 Pet. 550.
Thomas *v.* Osborn, 19 How. 22.
The *Grapeshot*, 9 Wall. 129.
The *Lulu*, 10 Wall. 192.
The *Kalorama*, 10 Wall. 204.
The *Lottawanna*, 21 Wall. 558.
The *Edith*, 94 U. S. 518.
The *Robert W. Parsons*, 191 U. S. 17.
The Steamer *St. Lawrence*, 1 Black 522.
Peyroux *v.* Howard, 7 Pet. 324.
Edwards *v.* Elliott, 21 Wall. 532.
New Jersey Steam Nav. Co. *v.* Merchants' Bank, 6 How. 343.
Johnson *v.* Chicago, etc., Co., 119 U. S. 388.
Steamboat Co. *v.* Chase, 16 Wall. 522.
The *Belfast*, 7 Wall. 624.
The *Moses Taylor*, 4 Wall. 411.
The *Hine v.* Trevor, 4 Wall. 555. Compare The *Winnebago*, 205 U. S. 354.
The *Glide*, 167 U. S. 606.

Suit to Enforce Payment of Duties

The lien for duties on imported goods can not be enforced by a libel in the admiralty, as the revenue jurisdiction of the district courts in *rem* is confined to seizures for forfeitures under the laws of impost, etc.; the remedy is by suit at common law.

U. S. *v.* Tea, 12 Wheat. 487.

The sole essentials of admiralty jurisdiction in a suit in *rem* for breach of contract are that the contract is maritime, and that the property proceeded against is within the lawful custody of the court. The existence of a maritime lien is not jurisdictional, but is a matter going to the merits.

The *Resolute*, 168 U. S. 437.

Obstructions to Navigation

Leaving piles in the bed of a tide river within the body of a county, so that a ship is thereby injured, is a tort cognizable in admiralty.

Philadelphia, etc., R. Co. *v.* Towboat Co., 23 How. 209.
See also—
The *James Gray v.* The *John Fraser*, 21 How. 187.
Panama R. Co. *v.* Napier Shipping Co., 166 U. S. 280.

Transportation

The grant of admiralty jurisdiction can not be made to depend upon the power of Congress to regulate commerce and includes maritime causes arising from transportation on navigable waters between ports and places of the same State.

The *Belfast*, 7 Wall. 624, in effect overruling Allen *v.* Newberry, 21 How. 244, and Maguire *v.* Card, 21 How. 248, wherein it was held, respectively, that an admiralty court had no jurisdiction of a suit upon a contract of shipment of goods between ports and places of the same State, nor of a suit on a contract for supplies furnished to a vessel engaged in such trade.

Rights of Mortgagee and Owner of Vessel

There is no jurisdiction in admiralty in questions of property between a mortgagee and the owner of a vessel. A court of admiralty has no jurisdiction to decree the sale of a ship for an unpaid mortgage, nor can it declare a ship to be the property of the mortgagees and direct the possession of her to be given to them.

Bogart *v.* The Steamboat *John Jay*, 17 How. 400.

Supplemental Suits to Determine Ownership of Proceeds

It is an inherent incident to the jurisdiction of the court to entertain supplemental suits by the parties in interest to ascertain to whom those proceeds rightfully belong and to deliver them over to the parties who establish the lawful ownership thereof.

Andrews *v.* Wall, 3 How. 573.

Disputes Between Part Owners

The jurisdiction of courts of admiralty in cases of part owners having unequal interests and shares is not, and never has been, applied to direct a sale upon any dispute between them as to the trade and navigation of a ship engaged in maritime voyages, properly so-called.

The Steamboat *Orleans*, 11 Pet. 182.

Pilotage

Suits for pilotage are within the admiralty and maritime jurisdiction of the United States. The service is strictly maritime. The jurisdiction of the district courts in such cases is not ousted by State laws or acts of Congress. The only effect is to leave the jurisdiction concurrent in the State courts.

The *Hope*, 10 Pet. 118.
Ex parte Hager, 104 U. S. 520.
In re McNiel, 13 Wall. 242.

Wharfage

The jurisdiction of admiralty extends to claims for wharfage, and the fact that the claim rests upon an implied contract only, for a reasonable compensation for the use of the wharf, or that the vessel is a mere barge makes no difference.

Ex parte Easton, 95 U. S. 68.

Insurance

A contract of marine insurance is a maritime contract within admiralty jurisdiction.

Insurance Company *v.* Dunham, 11 Wall. 1.

Jurisdiction of States

In general.—The States can not, by local legislation, enlarge or limit the jurisdiction of the Federal courts in admiralty. By this clause the States parted with all power to legislate concerning admiralty and maritime matters. They can not confer on their own courts jurisdiction of suits cognizable solely in admiralty. But in certain cases jurisdiction is concurrent, and the ninth section of the judiciary act expressly saves to suitors in all cases a common-law remedy where the common law is competent to give it. So personal suits on maritime contracts may be maintained in State courts, and an action to enforce a lien for towage by foreclosure under a State law is a suit in *personam* to enforce a common-law remedy saved by the Revised Statutes, sec. 563. An action for damages caused by a burning vessel cut loose by the defendant's servants is an action for a remedy which the common law is competent to give.

The Steamer *St. Lawrence*, 1 Black 526.
Smith *v.* Maryland, 18 How. 76.
Taylor *v.* Carryl, 20 How. 598.
Waring *v.* Clarke, 5 How. 461.
Knapp *v.* McCaffrey, 177 U. S. 647.
Chappell *v.* Bradshaw, 128 U. S. 134.
See also—
The *J. E. Rumbell*, 148 U. S. 12.
The *Belfast*, 7 Wall. 644.
Schoonmaker *v.* Gilmore, 102 U. S. 119.
The *Roanoke*, 189 U. S. 197.
Union Fish Co. *v.* Erickson, 248 U. S. 308.
Peyroux *v.* Howard, 7 Pet. 324.
Steamboat *New Orleans*, 11 Pet. 184
Maguire *v.* Card, 21 How. 248.
The Ship *Potomac*, 2 Black 581.

A decision of the highest court of a State excluding maritime contracts from the operation of a State statute, not as a matter of statutory construction but due to its opinion that the Federal Constitution so requires, presents a constitutional question reviewable in the Supreme Court of the United States.

Red Cross Line *v.* Atlantic Fruit Co., 264 U. S. 109.

Over seacoast.—Within what are generally recognized as the territorial limits of States by the law of nations, a State can define its boundaries on the sea and the boundaries of its coun-

ties, and a State has jurisdiction within such territorial limits of offenses not punishable under acts of Congress.

Manchester *v.* Massachusetts, 139 U. S. 264.
U. S. *v.* Bevans, 3 Wheat. 390.
U. S. *v.* Coombs, 12 Pet. 75.

State oyster laws.—A State statute passed to protect the growth of oysters in the waters of the State by prohibiting the use of particular instruments in dredging, and declaring a forfeiture to the State of the boat or vessel employed for the purpose, is not repugnant to the provision which declares that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction.

Smith *v.* Maryland, 18 How. 73.

Cases in Which the United States is a Party

The Federal courts have exclusive jurisdiction in all cases in which the United States is a party, and under the act of 1888 this jurisdiction attaches when the Government is plaintiff without regard to the value of the matter in dispute; e. g., to a suit brought by the United States as guardian of Indians who have never become citizens. But while the judicial power extends to controversies to which the Government is a party, yet where the United States is merely a nominal party the same rules will apply in determining jurisdiction as if the suit were between private individuals appearing as parties to the record. So, where an act of Congress requires that contractors shall give bonds for the benefit of material men and laborers, who are authorized to sue thereon in the name of the United States, such a suit is not one brought by the United States so as to give the Federal courts jurisdiction regardless of the subject matter and the citizenship of the real parties in interest. Whether a suit is one against the United States is to be determined by the result of the decree that may be rendered.

The *Moses Taylor*, 4 Wall. 430.
U. S. *v.* Sayward, 160 U. S. 498.
U. S. *v.* Boyd, 68 Fed. 577.
U. S. *v.* Beebe, 127 U. S. 347.
Curtner *v.* U. S. 149 U. S. 673.
U. S. *v.* Sheridan, 119 Fed. 236.

It can not be assumed that the framers of the Constitution while extending the judicial power of the United States to controversies between two or more States of the Union, and between a State of the Union and foreign States, intended to exempt a State altogether from suit by the General Government. They could not have overlooked the possibility that controversies, capable of judicial solution, might arise between the United States and some of the States, and that the permanence of the Union might be endangered if to some tribunal was not intrusted the power to determine them according to the recognized principles of law.

U. S. *v.* Texas, 143 U. S. 644.

The United States can not be sued without its consent.

Louisiana *v.* McAdoo, 234 U. S. 627.
Kansas *v.* U. S., 204 U. S. 331.
U. S. *v.* Lee, 106 U. S. 196.
U. S. *v.* Clarke, 8 Pet. 436.
U. S. *v.* McLemore, 4 How. 286.
Hill *v.* U. S., 9 How. 386.
Nations *v.* Johnson, 24 How. 195.
The *Siren*, 7 Wall. 152.
The *Davis*, 10 Wall. 15.
For a list of statutes which provide for suits for compensation against the United States in both the district courts and the Court of Claims in the manner provided by section 24, paragraph 20, and section 145 of the Judicial Code, see U. S. *v.* Pfitsch, 256 U. S. 553.

Wherever the United States appear as parties plaintiff or petitioners, the circuit court of the United States has jurisdiction.

U. S. *v.* Allen, 171 Fed. 907.
Erickson *v.* U. S., 264 U. S. 246.

The United States has the same remedy in a court of equity to set aside or annul a patent for land on the ground of fraud in procuring its issue as an individual would have in regard to his own deed procured under similar circumstances.

U. S. *v.* Rose, 24 Fed. 196.
U. S. *v.* Mills, 190 Fed. 513, reversing decree 169 Fed. 686.

An action of trespass to try title against officers of the United States in possession of land is an action against the United States and its land and not merely against its officers, as also is a suit against the Secretary of the Interior to enjoin the sale of lands claimed by the State and which the United States agreed to protect for Indians. But a bill by a State against the President to enjoin the execution of the reconstruction laws is not a suit against the United States.

Stanley *v.* Schwalby, 162 U. S. 272.
Minnesota *v.* Hitchcock, 185 U. S. 384.
Mississippi *v.* Johnson, 4 Wall. 498.
Georgia *v.* Stanton, 6 Wall. 50.
Osborn *v.* U. S. Bank, 9 Wheat. 738.
Murray *v.* Hoboken Land, etc., Co., 18 How. 281.
See also—
Smietanka *v.* Indiana Steel Co., 257 U. S. 1 and Levy *v.* Wardell, 258 U. S. 542, as to suit against the successor of an officer of the United States for the recovery of taxes erroneously exacted.
As to suits against the United States on contracts, see—
MacArthur Bros. Co. *v.* U. S., 258 U. S. 6.
Hunt *v.* U. S., 257 U. S. 125.
Horstmann Co. *v.* U. S., 257 U. S. 138.
Miller *v.* American Bonding Co., 257 U. S. 304.
U. S. *v.* Cook, 257 U. S. 523.
New York, etc., R. Co. *v.* U. S., 258 U. S. 32.
Ellis *v.* U. S., 206 U. S. 246.
Wood *v.* U. S., 258 U. S. 120.
Sloan Shipyards *v.* U. S. Shipping Bd., 258 U. S. 549.

Cases Between States

The power extends to controversies between two or more States, including suits to settle disputed boundaries; but a suit by a State on claims assigned to it against another State is not a suit between States within the meaning of this clause.

Osborn *v.* U. S. Bank, 9 Wheat. 738.
Rhode Island *v.* Massachusetts, 12 Pet. 657.
Alabama *v.* Georgia, 23 How. 510.
New Hampshire *v.* Louisiana, 108 U. S. 91.
Kansas *v.* Colorado, 185 U. S. 125; 206 U. S. 46.
South Dakota *v.* North Carolina, 192 U. S. 286.
Georgia *v.* South Carolina, 257 U. S. 516.
Minnesota *v.* Wisconsin, 258 U. S. 149.

In order to maintain jurisdiction of a suit between two States it must appear that the controversy to be determined is a controversy arising directly between them and not a controversy in vindication of the grievances of particular individuals.

Louisiana *v.* Texas, 176 U. S. 16.[1]
Penna *v.* West Virginia, 262 U. S. 553.

Cases Between a State and Citizens of Another State

In General

This clause extends the judicial power to suits wherein a State is a party. By the Constitution as originally adopted a State was suable in the Supreme Court by an individual citizen of another State, and it was this ruling that led to the adoption of the eleventh amendment prohibiting suits in the Federal courts against a State by the citizens of another State or by aliens. Jurisdiction of the Federal courts attaches only when a State is a party to the record and the governor or chief executive and the attorney general are served with process, or when an officer is sued in his official capacity. But a suit against an officer is not a suit against the State unless it is against him solely in his representative capacity.

New York *v.* Connecticut, 4 Dall. 1.
Chisholm *v.* Georgia, 2 Dall. 450.
Governor *v.* Madrazo, 1 Pet. 122.
Georgia *v.* Brailsford, 2 Dall. 402.
Rolston *v.* Missouri, 120 U. S. 411.
See also—
New Jersey *v.* New York, 5 Pet. 290.
Grayson *v.* Virginia, 3 Dall. 320.
Rhode Island *v.* Massachusetts, 12 Pet. 657.
Briscoe *v.* Bank, 11 Pet. 321.
U. S. *v.* Lee, 106 U. S. 207.
Fowler *v.* Lindsey, 3 Dall. 411.
U. S. *v.* Peters, 5 Cranch 115.
Oswald *v.* New York, 2 Dall. 415.
New Jersey *v.* New York, 3 Pet. 464.
Poydras De La Lande *v.* Louisiana, 17 How. 2.
Kentucky *v.* Dennison, 24 How. 97.
In re Ayers, 123 U. S. 506.
Pennoyer *v.* McConnaughy, 140 U. S. 9.
Illinois Cent. R. Co. *v.* Adams, 180 U. S. 37.

[1] See also "Original jurisdiction of Supreme Court," p. 475.

The object of vesting in the courts of the United States jurisdiction of suits by one State against the citizens of another was to enable such controversies to be determined by a national tribunal and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff State were compelled to resort to the courts of the State of which the defendants were citizens.

Wisconsin *v.* Pelican Ins. Co., 127 U. S. 289.

Involving Determination of Political Questions

Jurisdiction over controversies "between a State and citizens of another State" does not embrace the determination of political questions, and where no controversy exists between States, the United States Supreme Court can not restrain the governor of a State in the discharge of his executive functions in a matter lawfully confided to his discretion and judgment.

Louisiana *v.* Texas, 176 U. S. 23.

Suit Against the State in Assumpsit

A State is amenable to the jurisdiction of the Supreme Court of the United States at the suit of a citizen of another State, in assumpsit.

Chisholm *v.* Georgia, 2 Dall. 419, as a result of which case the eleventh amendment was passed.
New Hampshire *v.* Louisiana, 108 U. S. 86.

As modified by the eleventh amendment this clause prescribes the limits of the judicial power of the court.

U. S. *v.* Louisiana, 123 U. S. 35.

If a State statute gives a right to bring suit against the State in the State courts, a Federal court may entertain such a suit when grounds of Federal jurisdiction exist.

Reinhart *v.* McDonald, 76 Fed. 403.

Regardless of Parties to Suit

A case arising under the Constitution or laws of the United States is cognizable in courts of the Union whoever may be the parties to that case, and an exception does not exist in those cases in which the State may be a party.

Cohens *v.* Virginia, 6 Wheat. 383.
Osborn *v.* U. S. Bank, 9 Wheat. 819.

Suit Against a State by a Citizen of the State

This clause does not give the right to bring a suit in the Federal court against a State by a citizen of that State in a case arising under the Constitution and laws of the United States.

Hans *v.* Louisiana, 134 U. S. 9.
North Carolina *v.* Temple, 134 U. S. 30.

Under this clause a State may bring suit against a citizen of another State, but not against a citizen of the same State.

Pennsylvania *v.* Quicksilver Min. Co., 10 Wall. 555.

In Texas *v.* Interstate Com. Com. (258 U. S. 158) the court said that the commission and the Railroad Labor Board, regarded as corporate entities for governmental purposes, are not "citizens" of any State.

Cases Between Citizens of Different States

In General

This clause gives to the Federal courts jurisdiction over controversies between citizens of different States. The object of the grant of power in this respect was to secure for the trial of controversies between citizens of different States a more impartial tribunal than the courts of the State where one litigant resided would be. It is the situation of the parties and not their character that determines the jurisdiction of the Federal courts. The test of jurisdiction is diversity of citizenship, and it is indispensable that all the parties have jurisdictional capacity; each plaintiff must be capable of suing each defendant in the Federal court. If a necessary party defendant is a citizen of the same State with the plaintiff the Federal courts have no jurisdiction. The mere allegation of diverse citizenship by plaintiffs electing to assert a joint claim can not create jurisdiction. For the purpose of jurisdiction a party is not necessarily a citizen of the State of which he is a resident. An averment that one is a "resident" of a State is not sufficient; it must affirmatively appear that he is a "citizen." But a party is sufficiently described as a citizen where he alleges that his rights as such have been infringed and avers that he is a "resident," and the sufficiency of the allegation is not questioned below.

Brown *v.* Keene, 8 Pet. 115.
Barrow S. S. Co. *v.* Kane, 170 U. S. 111.
Conolly *v.* Taylor, 2 Pet. 556.
Wickliffe *v.* Eve, 17 How. 468.
Strawbridge *v.* Curtiss, 3 Cranch 267.
Smith *v.* Lyon, 133 U. S. 316.
Florida, etc., R. Co. *v.* Bell, 176 U. S. 334.
Shelton *v.* Tiffin, 6 How. 184.
Wood *v.* Wagnon, 2 Cranch 9.
Cameron *v.* Hodges, 127 U. S. 324.
Sully *v.* American Nat. Bank, 178 U. S. 298.
Salem Co. *v.* Manufacturers Co., 264 U. S. 182.

See also—

McMicken *v.* Webb, 11 Pet. 38.
Ohio *v.* Wheeler, 1 Black 297.
Board of Comrs. *v.* Aspinwall, 24 How. 384.
Mail Co. v. Flanders, 12 Wall. 135.
Anderson *v.* Watt, 138 U. S. 706.
New Orleans *v.* Winter, 1 Wheat. 95.
Coal Co. *v.* Blatchford, 11 Wall. 174.
Case of Sewing Machine Companies, 18 Wall. 575.
Massachusetts, etc., Co. *v.* Cane Creek, 155 U. S. 285.
Hooe *v.* Jamieson, 166 U. S. 397.
Wheless *v.* St. Louis, 180 U. S. 382.
Edwards *v.* Tanneret, 12 Wall. 450.
Timmons *v.* Elyton Land Co., 139 U. S. 379.
Southern Pac. Co. *v.* Denton, 146 U. S. 205.
Cooper *v.* Newell, 155 U. S. 533.
Robertson *v.* Cease, 97 U. S. 648.
Menard *v.* Goggan, 121 U. S. 253.
Denny *v.* Pironi, 141 U. S. 123.
Wolfe *v.* Hartford Ins. Co., 148 U. S. 389.
Jackson *v.* Ashton, 8 Pet. 149.

Both parties must be citizens in order to confer jurisdiction under this clause.

U. S. Bank *v.* Deveaux, 5 Cranch 86.

Object of Clause

In Whelan *v.* New York, etc., R. Co. (35 Fed. 849) the court said:

The clause in the Constitution extending the judicial power to controversies "between citizens of different States" was intended to secure the citizen against local prejudice, which might injure him if compelled to litigate his controversy with another in the tribunals of a State not his own. The object was the avowed purpose of the constitutional provision at the time of its adoption (p. 858).

No Limitation on the Class of Cases

The Constitution imposes no limitation upon the class of cases involving controversies between citizens of different States to which the judicial power of the United States may be extended; and Congress may, therefore, lawfully provide for bringing, at the option of either of the parties, all such controversies within the jurisdiction of the Federal judiciary.

Gaines *v.* Fuentes, 92 U. S. 18.

Following Decisions of State Courts

Comity or respect for the State courts does not require the Supreme Court of the United States to surrender its judgment to decisions made in the State and declare contracts to be void which upon full consideration have been pronounced valid.

In Rowan *v.* Runnels (5 How. 139) it was said:

Undoubtedly this court will always feel itself bound to respect the decisions of the State courts, and from the time they are made will regard them as conclusive in all cases upon the construction of their own constitution and laws. But we ought not to give to them a retroactive effect, and allow them to render invalid contracts entered into with citizens of other States, which in the judgment of this court were lawfully made. For, if such a rule were adopted, and the comity due to State decisions pushed to this extent, it is evident that the provision in the Constitution of the United States, which secures to the citizens of another State the right to sue in the courts of the United States, might become utterly useless and nugatory.

Action to Annul a Will

The judicial power of the United States extends "to controversies between citizens of different States;" and on the supposition, which is not admitted, that this embraces only such as arise in cases "in law and equity," it does not necessarily exclude those which may involve the exercise of jurisdiction in reference to the proof of validity of wills.

Ellis *v.* Davis, 109 U. S. 496.
Farrell *v.* O'Brien, 199 U. S. 89.

Suit on Bond Taken in Name of Governor

A suit on an officer's bond may be brought by citizens of another State though the bonds were taken in the name of the

governor of the State, and the suit must be brought in the name of the governor for the use of the real plaintiff. As the instrument of the State law to afford a remedy against the sheriff and his sureties, the governor's name is in the bond and to a suit upon it, but in no just view of the Constitution or law can he be considered as a litigant party.

McNutt *v.* Bland, 2 How. 14.

Relation to Legislative Grant of Jurisdiction

The words in the legislative grant of jurisdiction, "of the State where the suit is brought and a citizen of another State," are obviously no more than equivalent terms to confine suits in the circuit courts to those which are "between citizens of different States."

Louisville, etc., R. Co. *v.* Letson, 2 How. 553.

Residence and Citizenship

Residence and citizenship are wholly different things within the meaning of the Constitution and the laws defining and regulating the jurisdiction of the circuit courts of the United States; and a mere averment of residence in a particular State is not an averment of citizenship in that State for the purposes of jurisdiction.

Steigleder *v.* McQuesten, 198 U. S. 143.

Where plaintiff made only a temporary change of residence for the purpose of prosecuting a suit in the Federal court, such court is without jurisdiction.

Jones *v.* League, 18 How. 76.
Morris *v.* Gilmer, 129 U. S. 315.
Williamson *v.* Osenton, 232 U. S. 619.
Chicago, etc., R. Co. *v.* Ohle, 117 U. S. 123.
Gilbert *v.* David, 235 U. S. 561.

To give the Federal courts jurisdiction on the ground of diversity of citizenship it will be presumed that one who has resided in the State for several years, being engaged in a permanent business, is a citizen of such State unless the contrary appears, intention governing change of citizenship being capable of more satisfactory proof by acts than by declarations, and an exercise of the right of suffrage being conclusive on the subject.

Shelton *v.* Tiffin, 6 How. 162.
Utah-Nevada Co. *v.* De Lamar, 133 Fed. 113; writ of certiorari denied in 199 U. S. 605.

District of Columbia and Territories as States

The District of Columbia and the Territories are not States within the judicial clause of the Constitution giving jurisdiction in cases between citizens of different States.

Downes *v.* Bidwell, 182 U. S. 270.
Hooe *v.* Jamieson, 166 U. S. 397.
Hepburn *v.* Ellzey, 2 Cranch 452.

New Orleans *v.* Winter, 1 Wheat. 91.
American Ins. Co. *v.* Canter, 1 Pet. 544.
Barney *v.* Baltimore, 6 Wall. 287.
Cameron *v.* Hodges, 127 U. S. 325.

The Constitution does not restrain Congress from giving to a United States court for a Territorial district jurisdiction over a case brought by or against a citizen of the Territory.

Sere *v.* Pitot, 6 Cranch 337.

Corporations [1]

In General

In the earliest cases it was held that a corporation was not a citizen, but Federal courts would look to its members, and if they were citizens of a different State from the party sued they were competent to sue in the Federal courts, but all the corporators must be citizens of a different State from the party sued.

Hope Ins. Co. *v.* Boardman, 5 Cranch 57.
Bank of U. S. *v.* Deveaux, 5 Cranch 61.
Sullivan *v.* Fulton Steamboat Co., 6 Wheat. 450.
Irvine *v.* Lowry, 14 Pet. 299.

The same rule is announced in some of the later cases.

Muller *v.* Dows, 94 U. S. 444.
Taylor *v.* Illinois Cent. R. Co., 89 Fed. 119.

The citizenship of the individual members of a corporation, for the purposes of Federal jurisdiction, is conclusively presumed to be that of the State in which the corporation is organized.

Ohio, etc., R. Co. *v.* Wheeler, 1 Black 295.
U. S. *v.* Gillis, 95 U. S. 407.
Steamship Company *v.* Tugman, 106 U. S. 118.
St. Louis, etc., R. Co. *v.* James, 161 U. S. 545.

Now a corporation is generally deemed to be a citizen of the State of its creation, so far as the jurisdiction of Federal courts depends on that question.

Railway Co. *v.* Whitton, 13 Wall. 283.
Kansas Pac. R. Co. *v.* Atchison, etc., R. Co., 112 U. S. 414.
Shaw *v.* Quincy Min. Co., 145 U. S. 444.
Wisconsin *v.* Pelican Ins. Co., 127 U. S. 265.
Rundle *v.* Delaware, etc., Canal Co., 14 How. 80.
Salmon Falls Mfg. Co. *v.* Goddard, 14 How. 446.
Philadelphia, etc., R. Co. *v.* Derby, 14 How. 468.
Marshall *v.* Baltimore, etc., R. Co., 16 How. 314.

A corporation is a citizen for the purpose of suit in the Federal courts; but it must be organized as such. A limited partnership is not within the rule notwithstanding its capacity to sue in its association name. Under this clause a corporation will be deemed to be a citizen of the State where it was created, regardless of the actual citizenship of its members, which for purposes of jurisdiction over the corporation is conclusively presumed to be in the State of incorporation. The adoption of

[1] See same subject, pp. 335, 509, 573, 593, 654, 667, 712, 721, and 729.

a foreign corporation by a State does not make the corporation a citizen of that State within this clause, but it remains a citizen of the State of its creation. A corporation organized in two different States can not be joined in a suit as one and the same plaintiff, nor sue in the Federal court a citizen of either of the States in which it was organized, and a corporation chartered by two or more States is not, if sued in one of those States, a citizen of any other State; but a railway company merely operating in several States under authority granted by each can not be deemed a citizen of each.

Case of Sewing Machine Companies, 18 Wall. 575.
Chapman *v.* Barney, 129 U. S. 682.
Great Southern, etc., Hotel Co. *v.* Jones, 177 U. S. 455.
Louisville, etc., R. Co. *v.* Letson, 2 How. 555.
Railway Co. *v.* Whitton, 13 Wall. 285.
Ohio, etc., R. Co. *v.* Wheeler, 1 Black 297.
St. Joseph, etc., R. Co. *v.* Steele, 167 U. S. 663.
See also—
Railroad Co. *v.* Koontz, 104 U. S. 12.
Nashua, etc., R. Co. *v.* Lowell, etc., R. Co., 136 U. S. 370.
Barrow S. S. Co. *v.* Kane, 170 U. S. 106.
Pennsylvania Co. *v.* St. Louis, etc., R. Co., 118 U. S. 297.
Southern R. Co. *v.* Allison, 190 U. S. 326.

Representatives and persons occupying fiduciary capacities generally stand on their own citizenship in determining the jurisdiction of the Federal courts. The citizenship of a beneficiary in a trust deed is immaterial in a suit by the trustee to foreclose. A guardian, and not his ward, is the party plaintiff so far as jurisdiction is concerned, where he has authority to sue in his own name.

New Orleans *v.* Gaines, 138 U. S. 606.
Dodge *v.* Tulleys, 144 U. S. 455.
Mexican Cent. R. Co. *v.* Eckman, 187 U. S. 429.
Chappedelaine *v.* Dechenaux, 4 Cranch 308.
Childress *v.* Emory, 8 Wheat. 669.
Rice *v.* Houston, 13 Wall. 67.
Continental Ins. Co. *v.* Rhoads, 119 U. S. 240.
Plant Inv. Co. *v.* Jacksonville, etc., R. Co., 152 U. S. 77.

The courts will always have regard to the real, rather than to the nominal, party to a suit, in order to determine their jurisdiction. So the Federal courts have no jurisdiction of a suit on a right of action fictitiously assigned, and a corporation collusively organized by the members of a corporation of another State for the purpose of suing in a Federal court can not bring such suit. Where, however, a transfer of interest is real and for a consideration, the mere fact that it was made to give jurisdiction is immaterial. The jurisdiction of the Federal courts over assigned causes of action will be denied unless the record affirmatively shows the assignor's capacity to sue.

Blacklock *v.* Small, 127 U. S. 104.
Barney *v.* Baltimore, 6 Wall. 288.
Lehigh Min., etc., Co. *v.* Kelly, 64 Fed. 401.

Crawford *v.* Neal, 144 U. S. 593.
Metcalf *v.* Watertown, 128 U. S. 587.
See also—
Stewart *v.* Baltimore, etc., R. Co., 168 U. S. 449.
Dickerman *v.* Northern Trust Co., 176 U. S. 192.
Parker *v.* Ormsby, 141 U. S. 86.
Benjamin *v.* New Orleans, 169 U. S. 164.

The presumption that the stockholders of a corporation are citizens of the State which created it does not preclude them from asserting their actual citizenship to sustain the jurisdiction of a Federal circuit court of a suit brought by them as such stockholders.

Doctor *v.* Harrington, 196 U. S. 579.

Foreign Corporations

A foreign railroad corporation does not become a citizen of North Carolina, so far as to affect the jurisdiction of the Federal courts upon the question of diverse citizenship, by complying with statute which declares that such a corporation becomes a domestic corporation by filing with the secretary of State duly authenticated copies of its charter and by-laws.

Southern R. Co. *v.* Allison, 190 U. S. 326.

Incorporation or Adoption in Different States

A corporation which is chartered by each of several States is, for purposes of jurisdiction, a citizen of each of the States; and where such a corporation is sued in one of the States in which it holds a charter, as a citizen of that State, it can not set up that it is likewise a citizen of another.

Ohio, etc., R. Co. *v.* Wheeler, 1 Black 286.
Patch *v.* Wabash R. Co., 207 U. S. 277.
See also—
Louisville, etc., R. Co. *v.* Louisville Trust Co., 174 U. S. 552.
Memphis, etc., R. Co. *v.* Alabama, 107 U S. 581.
Pennsylvania R. Co. *v.* St. Louis, etc., R. Co., 118 U. S. 290, 630.
Nashua, etc., R. Co. *v.* Boston, etc., R. Co., 136 U. S. 356.
St. Joseph, etc., R. Co. *v.* Steele, 167 U. S. 659.
Missouri Pac. R. Co. *v.* Castle, 224 U. S. 541.

Consolidated Corporations of Different States

A corporation formed by the consolidation of several corporations chartered by different States is a citizen of all such States for the purposes of Federal jurisdiction.

Marshall *v.* Baltimore, etc., R. Co., 16 How. 314.
See also—
Railroad Co. *v.* Koontz, 104 U. S. 5, in which it was held that a railroad corporation chartered in one State does not become a domestic corporation in another State by virtue of leasing, purchasing, and operating roads in that State under certain enabling acts of the legislature.

Citizenship or Residence in Particular State

The State which grants its charter and within which it does business determines the jurisdiction of the Federal courts of

action to which a corporation is a party, and not the citizenship of its members.

Muller *v.* Dows, 94 U. S. 444.
Steamship Company *v.* Tugman, 106 U. S. 118.
St. Louis, etc., R. Co. *v.* James, 161 U. S. 545.
See also—
Elkhart Nat. Bank *v.* Northwestern Guaranty Loan Co., 84 Fed. 76, following and applying Smith *v.* Lyon, 133 U. S. 315, and Interior Const. etc., Co. *v.* Gibney, 160 U. S. 217.
Ex parte Schollenberger, 96 U. S. 369.
Pennsylvania Lumbermen's, etc., Ins. Co. *v.* Meyer, 197 U. S. 407.
Louisville, etc., R. Co. *v.* Letson, 2 How. 555.

States

A State is not a citizen within the meaning of this section.

Stone *v.* South Carolina, 117 U. S. 430.
Minnesota *v.* Northern Securities Co., 194 U. S. 48.
Postal Tel. Co. *v.* Alabama, 155 U. S. 487.

Citizens Claiming Lands Under Grants of Different States

Under this clause the jurisdiction of the Federal courts extends to a controversy over grants made from the State of Vermont and one made by the State of New Hampshire at the time when it comprehended the territory included in Vermont.

Pawlet *v.* Clark, 9 Cranch 322.

Also to a suit between citizens of Kentucky, claiming lands under different grants, the one issued by the State of Virginia prior to the separation of Kentucky from Virginia, and the other by the State of Kentucky, both upon warrants issued by Virginia, and locations founded thereon prior to the separation of Kentucky from Virginia.

Colson *v.* Lewis, 2 Wheat. 379.

Cases Between a State, or the Citizens Thereof, and Foreign States, Citizens, or Subjects

In General

This clause gives the Federal courts jurisdiction where foreign States or individual foreigners are parties; but it does not authorize cognizance of suits between aliens, and a citizen must be the adverse party. The jurisdiction extends to a suit between citizens of the same State where the plaintiff is merely nominal and suing for an alien. One who is an alien at the time a suit is commenced may sue in the Federal courts. The diversity of citizenship must, as in other cases, appear from the record, and although one party be described as an alien, the other must be expressly stated to be a citizen of a particular State. An averment that a plaintiff is "a citizen of London, England," is insufficient. At common law an alien can not maintain a real action, but the disability is purely personal. A court may have jurisdiction as to parties and subject matter, yet if it makes a decree which is not within the powers granted

to it, such decree is void, and a circuit court may entertain a suit between two aliens to impeach a decree in a former suit in the same circuit. The Chinese exclusion acts do not deprive a Chinaman of the right to have the Federal courts determine his right to land. An Indian tribe is not a foreign nation within this clause. A foreign corporation is an alien for the purposes of suit in the Federal courts.

Chappedelaine *v.* Dechenaux, 4 Cranch 308.
Mossman *v.* Higginson, 4 Dall. 14.
Jackson *v.* Twentymen, 2 Pet. 136.
Brown *v.* Strode, 5 Cranch 303.
Cook *v.* Lillo, 103 U. S. 793.
Hodgson *v.* Bowerbank, 5 Cranch 304.
Stuart *v.* Easton, 156 U. S. 47.
Jones *v.* McMasters, 20 How. 20.
Kempe *v.* Kennedy, 5 Cranch 173.
U. S. *v.* Walker, 109 U. S. 258.
Lacassagne *v.* Chapuis, 144 U. S. 126.
U. S. *v.* Jung Ah Lung, 124 U. S. 621.
Cherokee Nation *v.* Georgia, 5 Pet. 1.
Society for Propagation of Gospel *v.* New Haven, 8 Wheat. 464.
See also—
Montalet *v.* Murray, 4 Cranch 47.
Gassies *v.* Ballon, 6 Pet. 761.
Brown *v.* Keene, 8 Pet. 112.
Bors *v.* Preston, 111 U. S. 263.
Lanfear *v.* Hunley, 4 Wall. 209.
McDonogh *v.* Millaudon, 3 How. 693.
Semple *v.* Hagar, 4 Wall. 433.
Worcester *v.* Georgia, 6 Pet. 515.
Commercial, etc., Bank *v.* Slocomb, 14 Pet. 60.

Under this provision the Federal court had jurisdiction of a suit between a West Virginia corporation and the Republic of Colombia.

Colombia *v.* Cauca Co., 190 U. S. 524.

A foreign sovereign, as well as any other person who has a demand of a civil nature against a citizen of the United States, may maintain an action in our Federal courts therefor.

The *Sapphire*, 11 Wall. 164.

Whatever the Subject of Controversy

If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union.

Cohens *v.* Virginia, 6 Wheat. 378.

Indian Tribe Not a Foreign State

An Indian tribe or nation within the United States is not a foreign State in the sense of the Constitution and can not maintain an action in the courts of the United States.

Cherokee Nation *v.* Georgia, 5 Pet. 20.

Between Aliens

The judicial power was not extended by the Constitution to private suits in which an alien is a party unless a citizen be the adverse party.

Jackson *v.* Twentymen, 2 Pet. 136.
Montalet *v.* Murray, 4 Cranch 46.
Bailiff *v.* Tipping, 2 Cranch 406.
But see—
Mason *v.* Ship *Blaireau*, 2 Cranch 264, wherein Chief Justice Marshall said: "Whatever doubts may exist in a case where the jurisdiction may be objected to, there ought to be none where the parties assent to it."

State Courts

In General

The judicial power extends to cases in State courts and to statutes, whether passed by State legislatures or by Congress, which are claimed to be repugnant to the Federal Constitution, but not to statutes claimed to be void under a State constitution only. The judiciary can only inquire whether the means devised by Congress in the exercise of a power granted are repugnant to the Constitution, not whether Congress acted wisely or with a proper motive. And to warrant the judiciary in declaring an act of Congress void it must be clearly repugnant to the Constitution; the objection must not be doubtful, but must show a clear violation of the Constitution.

Calder *v.* Bull, 3 Dall. 399.
I. C. C. *v.* Brimson, 154 U. S. 447.
Marbury *v.* Madison, 1 Cranch 176.
Fletcher *v.* Peck, 6 Cranch 131.
Hylton *v.* U. S., 3 Dall. 175.
Dartmouth College *v.* Woodward, 4 Wheat. 625.
Chesapeake, etc., R. Co. *v.* Kentucky, 179 U. S. 394.
See also—
Parsons *v.* D. C., 170 U. S. 45.
Scott *v.* Sandford, 19 How. 405.
U. S. *v.* Union Pac. R. Co., 91 U. S. 91.
Brass *v.* Stoeser, 153 U. S. 403.
Li Sing *v.* U. S., 180 U. S. 495.
Treat *v.* White, 181 U. S. 269.
Ex parte McCardle, 7 Wall. 514.
Soon Hing *v.* Crowley, 113 U. S. 710.
U. S. *v.* Des Moines, etc., R. Co., 142 U. S. 544.
Munn *v.* Illinois, 94 U. S. 123.
Livingston *v.* Darlington, 101 U. S. 410.
Hooper *v.* California, 155 U. S. 657.
Parsons *v.* Bedford, 3 Pet. 448.
Fairbank *v.* U. S., 181 U. S. 285.
Chesapeake, etc., Tel. Co. *v.* Manning, 186 U. S. 245.

The judicial power of the United States extends by the Constitution to controversies between citizens of different States as well as to cases arising under the Constitution, treaties, and laws of the United States, and the manner and conditions upon which that power shall be exercised, except as the original or

appellate character of the jurisdiction is especially designated in the Constitution, are mere matters of legislative discretion. In some cases, from their character, the judicial power is necessarily exclusive of all State authority; in other cases it may be made so at the option of Congress, or it may be exercised concurrently with that of the States.

Railway Co. *v.* Whitton, 13 Wall. 288.

Suits by States Against Citizens of Other States

On this subject the court said in Plaquemines, etc., Co. *v.* Henderson (170 U. S. 521):

As under the long-settled interpretation of the Constitution, the mere extension of the judicial power of the United States to suits brought by a State against citizens of other States did not, of itself, divest the State courts of jurisdiction to hear and determine such cases, and as Congress has not invested the national courts with exclusive jurisdiction in cases of that kind, it follows that the courts of a State may, so far as the Constitution and laws of the United States are concerned, take cognizance of a suit brought by the State in its own courts against citizens of other States; subject, of course, to the right of the defendant to have such suit removed to the proper circuit court of the United States, whenever the removal thereof is authorized by the acts of Congress, and subject, also, to the authority of this court to review the final judgment of the State court, if the case be one within our appellate jurisdiction.

See also—

Teal *v.* Felton, 12 How. 292.

Commonwealth v. Schaffer, 4 Dall. Appendix XXVI.

When Congress May Authorize State Courts to Act

Congress is at liberty to authorize the judicial officers of the several States to exercise such power as is ordinarily given to officers of courts not of record; such, for instance, as the power to take affidavits, to arrest and commit for trial offenders against the laws of the United States, to naturalize aliens, and to perform such other duties as may be regarded as incidental to the judicial power rather than a part of the judicial power itself. Robertson *v.* Baldwin (165 U. S. 278), wherein the court said:

The first proposition, that Congress has no authority under the Constitution to vest judicial power in the courts or judicial officers of the several States, originated in an observation of Mr. Justice Story in Martin *v.* Hunter (1 Wheat. 304) to the effect that Congress can not vest any portion of the judicial power of the United States, except in courts ordained and established by itself.

This was repeated in Houston *v.* Moore (5 Wheat. 1), and the same general doctrine has received the approval of the courts of several of the States. The better opinion is that the second section was intended as a constitutional definition of the judicial power (Chisholm *v.* Georgia, 2 Dall. 419, 475), which the Constitution intended to confine to courts created by Congress; in other words, that such power extends only to the trial and determination of cases in courts of record, and that the power of justices of the peace to arrest deserting sea-

men and deliver them on board their vessel is not within the definition of the "judicial power" as defined in the Constitution, and may be lawfully conferred on State officers, and acts of Congress conferring such jurisdiction are not unconstitutional.

Rights arising under the Federal employers' liability act may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion.

Second Employers' Liability Cases, 223 U. S. 1.

Power may be conferred upon a State officer, as such, to execute a duty imposed under an act of Congress, and the officer may execute the same, unless its execution is prohibited by the Constitution or legislation of the State.

Dallemagne *v.* Moisan, 197 U. S. 174.

Perjury Committed in State Court

Congress may provide for the punishment of perjury committted in a naturalization proceeding, whether the oath is taken before a Federal court or officer, or before a State court or officer, acting under authority derived from the act of Congress.

Holmgren *v.* U. S., 217 U. S. 509.

Jurisdiction of Territorial Courts

The Constitution contemplates cases arising under the Constitution and laws of the United States, cases affecting ambassadors or other public ministers and consuls, and cases of admiralty and maritime jurisdiction as constituting three distinct classes of cases, and to grant jurisdiction over one of such cases does not confer jurisdiction over either of the other two, and therefore a statute conferring on a Territorial court jurisdiction in all cases arising under the laws and Constitution of the United States did not confer exclusive jurisdiction in admiralty cases.

American Ins. Co. *v.* Canter, 1 Pet. 545.

State Laws as Affecting Federal Jurisdiction

Can Not Abridge or Impair Jurisdiction

The jurisdiction conferred upon the national courts can not be abridged or impaired by any State statute.

Barrow S. S. Co. *v.* Kane, 170 U. S. 111.
Insurance Company *v.* Morse, 20 Wall. 453.
Harrison *v.* St. Louis, etc., R. Co., 232 U. S. 318.

Allowing Attorney's Fee

Where a writ of error has been issued from the Supreme Court of the United States to review a judgment of a State court granting a peremptory mandamus and such judgment was affirmed, the State court is without authority to allow the successful plaintiff attorney's fees for prosecuting the writ of error,

as this would impair the right of a party to resort to the Federal courts in a proper case.

Missouri, etc., R. Co. *v.* Larabee, 234 U. S. 459.

Substantial Rights Given May be Enforced

A State law can not give jurisdiction to any Federal court, but it may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in the proper Federal tribunal whether it be a court of equity, of admiralty, or of common law. The statute in such cases does not confer the jurisdiction. That exists already, and it is invoked to give effect to the right by applying the appropriate remedy. This principle may be laid down as axiomatic in our national jurisprudence.

Ex parte McNiel, 13 Wall. 243.

The local laws can never confer jurisdiction on the courts of the United States. They can only furnish rules to ascertain the rights of parties, and thus assist in the administration of the proper remedies, where the jurisdiction is vested by the laws of the United States.

The Steamboat *Orleans*, 11 Pet. 183.

Requiring County to be Sued in the County Courts

State statute exempting the counties of the State from suit elsewhere than in the circuit courts of the county can not limit the jurisdiction of the Federal courts.

Cowles *v.* Mercer County, 7 Wall. 118.

Domestication of Foreign Corporations

State statute which provides that every railroad corporation of any other State which has theretofore leased or purchased any railroad in that State shall, within 60 days from the passage of the act, file a certified copy of its articles of incorporation or charter with the secretary of state, and shall thereupon become a domestic corporation, anything in its articles of incorporation or charter notwithstanding, does not create a domestic corporation out of a foreign corporation which has complied with the provisions of the statute so as to make it a domestic corporation within the meaning of the Federal Constitution, and to subject it, as such, to a suit by a citizen of the State of its origin.

St. Louis, etc., R. Co. *v.* James, 161 U. S. 564.

Removal of Causes

From One Circuit to Another

Congress may authorize the removal of suits from one circuit to another. There are no words in the Constitution to prohibit or restrain the exercise of this power.

Stuart *v.* Laird, 1 Cranch 299.

From State to Federal Courts

In general.—Act of Congress providing for the removal of suits from State courts to the United States Circuit Courts, when the circuit courts could be given by Congress original or appellate jurisdiction of such suits, is constitutional.

Nashville *v.* Cooper, 6 Wall. 247.
Fisk *v.* Henarie, 142 U. S. 459.

It is within the power of Congress to authorize a plaintiff who discovers, after suit brought in a State court, that the prejudice and local influence, against which the Constitution intended to guard, are such as are likely to prevent him from obtaining justice, to remove his case into a national court, and to prescribe the conditions upon which the removal shall be allowed.

Railway Co. *v.* Whitton, 13 Wall. 289.

A civil case, at law or in equity, presenting a controversy between citizens of different States and involving the requisite jurisdictional amount, is one which may be removed from a State court into the district court of the United States by the defendant, if not a resident of the State in which the case is brought; and this right of removal can not be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy.

Wilson *v.* Republic Iron Co., 257 U. S. 92.

Action at law equitable in form.—When the principal action is an action at law, the fact that under State statutes the process of attachment or garnishment against nonresidents is equitable in form could not cut off the right of removal where diversity of citizenship exists. The right to remove given by a constitutional act of Congress can not be taken away or abridged by State statutes.

Courtney *v.* Pradt, 196 U. S. 92.

Statute of limitations prescribed by Congress.—For such suits as may be removed from State courts into the Federal courts Congress may prescribe a statute of limitations which is binding upon the State courts as well as upon the Federal courts.

Mitchell *v.* Clark, 110 U. S. 642.
Arnson *v.* Murphy, 109 U. S. 238.

At any time before the final hearing or trial.—Act of Congress authorizing the removal of a suit from a State court to a United States court "at any time before the final hearing or trial" of the suit is within the power of Congress.

Insurance Company *v.* Dunn, 19 Wall. 226.

Before and after judgment.—This power of removal is not to be found in express terms in any part of the Constitution; if it

be given, it is only given by implication as a power necessary and proper to carry into effect some express power.

Martin *v.* Hunter, 1 Wheat. 349.

Power to remove State criminal cases.—The constitutional powers of Congress to authorize the removal of criminal cases for alleged offenses against State laws from State courts to the circuit courts of the United States when there arises a Federal question in them is as ample as its power to authorize the removal of a civil case.

Tennessee *v.* Davis, 100 U. S. 271.

Prohibiting removal of cases under employers' liability act.—The provision in the act of Congress of 1908, known as the employers' liability act, declaring that no case arising under the act should be removed, was enacted in the exercise of the power under this section, by which Congress is empowered to legislate as to the judicial power of such inferior courts as it may establish.

Kelly *v.* Chesapeake, etc., R. Co., 201 Fed. 602.
Gibson *v.* Bellingham, etc., R. Co., 213 Fed. 488.

Restricting removal of causes to Federal courts.—A statute which requires the secretary of state to declare the license for any foreign corporation to do business in the State canceled immediately on receipt of notice that it has attempted to assert its right to remove a cause to a Federal court, and authorizes the recovery of a heavy penalty for each day it thereafter does business in the State, is invalid.

Harrison *v.* St. Louis, etc., R. Co., 232 U. S. 318.
Barron *v.* Burnside, 121 U. S. 197.
Herndon *v.* Chicago, etc., R. Co., 218 U. S. 135.

As to a corporation engaged in both interstate and intrastate commerce, a State statute providing that whenever a foreign corporation doing business within the State removes or makes application to remove into a United States court any action against it by any citizen of the State, it shall be the duty of the secretary of state to revoke the license of such corporation to do business within the State, is invalid.

Wisconsin *v.* Philadelphia, etc., Co., 241 U. S. 329.
Doyle *v.* Continental Ins. Co., 94 U. S. 542.
Security Mut. Life Ins. Co. *v.* Prewitt, 202 U. S. 246. Compare Insurance Company *v.* Morse, 20 Wall. 445.

Clause 2.—SUPREME COURT.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law

and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Original jurisdiction.

In General

This clause distributes the jurisdiction conferred on the Supreme Court in the preceding clause into original and appellate jurisdiction, but does not confer any jurisdiction.

Pennsylvania *v.* Quicksilver Min. Co., 10 Wall. 553.
California *v.* Southern Pac. Co., 157 U. S. 229.
Ex parte Siebold, 100 U. S. 371.
Ex parte Barry, 2 How. 65.
Ex parte Hung Hang, 108 U. S. 552.

Exclusiveness of Original Jurisdiction

In Marbury *v.* Madison (1 Cranch, 137), Martin *v.* Hunter (1 Wheat. 337), and Osborn *v.* U. S. Bank (9 Wheat. 738) the view was sustained that the original jurisdiction of the Supreme Court was exclusive, notwithstanding the decision in U. S. *v.* Ravara (2 Dall. 297) sustaining the jurisdiction of the lower courts. This question has been settled, however, by several later decisions.

In Bors *v.* Preston (111 U. S. 263) it was held that the original jurisdiction of the Supreme Court in cases in which consuls were a party was not exclusive, and that the inferior courts of the United States might be given jurisdiction in such cases by congressional action. This doctrine was affirmed in—

Ames *v.* Kansas, 111 U. S. 469.
U. S. *v.* Louisiana, 123 U. S. 36.

By the Constitution and according to the statute, the original jurisdiction of this court is exclusive over suits between States.

Louisiana *v.* Texas, 176 U. S. 16.

In Which a State Shall Be Party

Limited to cases enumerated in preceding clause.—The original jurisdiction of the Supreme Court, in cases where a State is a party, refers to those cases in which, according to the grant of power made in the preceding clause, jurisdiction might be exercised in consequence of the character of the party, and an original suit might be instituted in any of the Federal courts; not to those cases in which an original suit might not be instituted in a Federal court. Of the last description is every case between a State and its citizens, and, perhaps, every case in which a State is enforcing its penal laws. In such cases, therefore, the Supreme Court can not take original jurisdiction. In every other case—that is, in every case to which the judicial power extends and in which original jurisdiction is not expressly given—that judicial power shall be exercised in the appellate and only in the appellate form.

Cohens *v.* Virginia, 6 Wheat. 398.

In Minnesota *v.* Hitchcock, 185 U. S. 383, the court said:

This paragraph, distributing the original and appellate jurisdiction of this court, is not to be taken as enlarging the judicial power of the United States or adding to the cases or matters to which by the first paragraph the judicial power is declared to extend. The question is, therefore, not finally settled by the fact that the State of Minnesota is a party to this litigation. It must also appear that the case is one to which by the first paragraph the judicial power of the United States extends.

See also—

Louisiana *v.* Texas, 176 U. S. 15.
U. S. *v.* Texas, 143 U. S. 643.
Duhne *v.* New Jersey, 251 U. S. 311.

Must have direct interest in controversy.—A State may prosecute a suit in the Supreme Court of the United States when it claims a direct interest in the controversy and it appears that the power of the court can redress its wrongs and save it from irreparable injury.

Pennsylvania *v.* Wheeling, etc., Brdg. Co., 13 How. 559.
Oklahoma *v.* Atchison, etc., R. Co., 220 U. S. 277.
Louisiana *v.* Texas, 176 U. S. 1.

Must be nominally or substantially a party.—A case which belongs to the jurisdiction of the Supreme Court on account of the interest that a State has in the controversy must be a case in which a State is either nominally or substantially the party. It is not sufficient that a State may be consequently affected.

Fowler *v.* Lindsay (3 Dall. 411), holding that a decision as to the right of soil, between individual citizens, can never affect the right of a State as to the soil or jurisdiction.

To restrain violation of State laws.—This section does not give the Supreme Court original jurisdiction, at the suit of a State, of an injunction to prevent persons and corporations, citizens of other States, from violating the penal or criminal laws of the State.

Oklahoma *v.* Gulf, etc., R. Co., 220 U. S. 290.

To compel performance of obligations.—The Supreme Court will decline to take jurisdiction of suits between States to compel the performance of obligations which, if the States had been independent nations, could not have enforced judicially but only through the political department of their governments.

Wisconsin *v.* Pelican Ins. Co., 127 U. S. 288.

Questions of boundary.—*Between two States.*—The Supreme Court has jurisdiction of questions of boundary between two States, and this jurisdiction is not defeated because in deciding that question it becomes necessary to examine into and construe compacts or agreements between those States, or because the decree which the court may render affects the territorial limits of

the political jurisdiction and sovereignty of the States which are parties to the proceeding.

Virginia *v.* West Virginia, 11 Wall. 55.
See also—
Louisiana *v.* Mississippi, 202 U. S. 1.
U. S. *v.* Texas, 143 U. S. 640.
Rhode Island *v.* Massachusetts, 12 Pet. 726.

A question of boundary between the States is within the original jurisdiction conferred on the Supreme Court. In such a case the Attorney General of the United States may intervene and file testimony, without making the United States a party in the technical sense of the term, but he will have no right to interfere in the pleading, or evidence, or admissions of the States, or of either of them, and when the case is ready for argument the court will hear the Attorney General as well as the counsel for the respective States, and in deciding upon the true boundary line will take into consideration all the evidence which may be offered by the United States, or either of the States. But the court does not regard the United States in this mode of proceeding as either plaintiff or defendant, and they are, therefore, not liable to a judgment against them or entitled to a judgment in their favor.

Florida *v.* Georgia, 17 How. 491.

Between a State and a Territory.—The Supreme Court can not take cognizance of an original suit brought by the United States against a State to determine the boundary between a Territory and such State.

U. S. *v.* Texas, 143 U. S. 641, holding that the settlement of a dispute as to a boundary between a Territory and a State is not limited to an action at law, and an act of Congress requiring the institution of a suit in equity to determine such question is constitutional.

Acts endangering adjacent State.—The acts of one State in seeking to promote the health and prosperity of its inhabitants by a system of public works which endangers the health and prosperity of the inhabitants of another and adjacent State create a sufficient basis for a controversy within the original jurisdiction of the Supreme Court.

Missouri *v.* Illinois, 180 U. S. 208; 200 U. S. 496.

Settlement of public debt as between old and new State.—The Supreme Court of the United States has jurisdiction of a suit to settle the equitable proportion of the public debt of the original State of Virginia at the time of its creation as a State.

Virginia *v.* West Virginia, 206 U. S. 290; 246 U. S. 565.

Obstruction to navigation by bridge.—A State may bring a suit in equity for the protection of its property on the same ground and to the same extent as a corporation or individual may ask it.

If a bridge built across a navigable river in one State be such an obstruction to the navigation as to change to any considerable extent the line of transportation through another State through which also the river flows, an injury is done to the latter State, and this injury is of a character for which an action at law could afford no adequate redress and presents a case for the extraordinary interposition of a court of chancery.

Pennsylvania *v.* Wheeling, etc., Brdg. Co., 13 How. 562.

Depriving adjoining State of natural flow of water.—The jurisdiction of the Supreme Court in controversies between States is not limited to such controversies as prior to the Union would have been just cause for reprisal by a complaining State under the law of nations; but the court may apply Federal, State, and international law, as the exigencies of the particular case may demand, and may take jurisdiction of the question as to the power of one State of the Union wholly to deprive another of the benefit of the water from a river rising in the former and by nature flowing into and through the latter.

Kansas *v.* Colorado, 185 U. S. 145.
Hudson County Water Co. *v.* McCarter, 209 U. S. 349.

Action on judgment recovered by State against foreign corporation.—The Supreme Court has no jurisdiction of an action brought by a State in one of her own courts against an insurance corporation, a citizen of another State, for penalties imposed by a State statute for not making returns to the insurance commissioner of the State as required by that statute.

Wisconsin *v.* Pelican Ins. Co., 127 U. S. 286.

May be represented by governor.—Where the State is a party plaintiff or defendant the governor represents the State, and the suit may be, in form, a suit by him as governor in behalf of the State where the State is plaintiff and he must be summoned or notified as the officer representing the State where the State is defendant.

Kentucky *v.* Dennison, 24 How. 98.

Suit instituted by attorney general evidence of consent of State.—The fact that the attorney general of a State has instituted proceedings in the Supreme Court of the United States is sufficient evidence that the State has consented to the prosecution of the suit in its name.

Pennsylvania *v.* Wheeling, etc., Brdg. Co., 13 How. 559.

Congress Without Power to Enlarge or Restrict Original Jurisdiction

The constitutional limitation of the original jurisdiction of the Supreme Court is restrictive of any other original jurisdiction. The rule of construction of the Constitution being that affirmative words in the Constitution declaring in what cases

the Supreme Court shall have original jurisdiction must be construed negatively as to all other cases.[1]

Ex parte Vallandigham, 1 Wall. 252.
Martin *v.* Hunter, 1 Wheat. 330.
Cohens *v.* Virginia, 6 Wheat. 400.
Ex parte Yerger, 8 Wall. 85.
Ex parte Wisner, 203 U. S. 449.
Ex parte Robinson, 19 Wall. 505.

In Marbury *v.* Madison (1 Cranch 137) the act of Congress authorizing the Supreme Court to issue writs of *mandamus* in cases warranted by the principles and usages of law to any courts appointed or persons holding office under the authority of the United States, was held unconstitutional in a suit for a *mandamus* to the Secretary of State, as this statute (1 Stat. 80, sec. 13) purported to extend jurisdiction to cases not named in the Constitution.

Questions of Procedure

In dealing with such a *quasi* international controversy as a suit between States, there is no municipal code governing the matter, and the Supreme Court may be called on to adjust differences that can not be dealt with by Congress or disposed of by the legislature of either State alone. That court, therefore, will not consider objections on matters of procedure, abatement, and the like, except so far as they affect the merits.

Virginia *v.* West Virginia, 220 U. S. 1; 246 U. S. 565.
Kansas *v.* Colorado, 206 U. S. 46.
Missouri *v.* Illinois, 200 U. S. 496.
Rhode Island *v.* Massachusetts, 14 Pet. 210.

Limit of Amount in Controversy

The original jurisdiction of the Supreme Court is conferred without limit of the amount in controversy, and it is questionable whether Congress could impose any such limit.

Wisconsin *v.* Pelican Ins. Co., 127 U. S. 265.

Power of Court to Regulate Process

In all cases where original jurisdiction is given by this clause the Supreme Court may regulate and mold the process it uses in such manner as in its judgment will best promote the purposes of justice.

Kentucky *v.* Dennison, 24 How. 98.

Although Congress undoubtedly has the right to prescribe the process and mode of proceeding in cases of which the Supreme Court has original jurisdiction as fully as in any other court, yet the omission to legislate on the subject could not deprive the court of the jurisdiction conferred; in the absence of any legislation conferred by Congress the court itself is authorized to prescribe its mode and form of proceeding so as to accomplish the ends for which the jurisdiction was given.

Florida *v.* Georgia, 17 How. 491.

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[1] See General Rules of Construction, p. 37.

Prize Causes

An application to intervene can not be first made in the Supreme Court, as such an application is in its nature original and not appellate, and that court has no original jurisdiction in prize causes.

The *William Bagaley*, 5 Wall. 412.

Ambassadors, Other Public Ministers, and Consuls

An indictment under an act of Congress for infracting the law of nations by offering violence to the person of a foreign minister is not a case "affecting ambassadors, other public ministers, and consuls." It is that of a public prosecution, instituted and conducted by and in the name of the United States, for the purpose of vindicating the law of nations, and that of the United States, offended, as the indictment charges, in the person of a public minister, by an assault committed on him by a private individual.

U. S. *v.* Ortega, 11 Wheat. 467.

The Supreme Court has the right to accept the certificate of the State Department that a party is or is not a privileged person.

In re Baiz, 135 U. S. 431.

Appellate Jurisdiction

In General

Appellate jurisdiction is given by the Constitution to the Supreme Court in all cases where it has not original jurisdiction, subject, however, to such exceptions and regulations as Congress may prescribe. It is, therefore, capable of embracing every case enumerated in the Constitution which is not exclusively to be decided by way of original jurisdiction.

Martin *v.* Hunter, 1 Wheat. 337.

Over Inferior Federal Courts

The judicial action of all inferior courts established by Congress may be, in accordance with the Constitution, subjected to the appellate jurisdiction of the Supreme Court of the United States.

U. S. *v.* Coe, 155 U. S. 82.
Gordon *v.* U. S., 117 U. S. 699.

Over State Tribunals

The appellate power of the United States extends to cases pending in the State courts, and an act of Congress authorizing the exercise of this jurisdiction in specified cases, by writ of error, is supported by the letter and spirit of the Constitution.

Martin *v.* Hunter, 1 Wheat. 351.
See also—
Dodge *v.* Woolsey, 18 How. 355.
Cohens *v.* Virginia, 6 Wheat. 416.
Ableman *v.* Booth, 21 How. 518.
Matthews *v.* Zane, 4 Cranch 382.

Under Such Regulations as the Congress Shall Make

Although the appellate powers of the Supreme Court are given by the Constitution, they are limited and regulated by acts of Congress.

Wiscart *v.* D'Auchy, 3 Dall. 327.
Barry *v.* Mercein, 5 How. 119.
Crawford *v.* Points, 13 How. 11.
National Exch. Bank *v.* Peters, 144 U. S. 570.
American Constr. Co. *v.* Jacksonville, etc., R. Co., 148 U. S. 372.
Colorado, etc., Min. Co. *v.* Turck, 150 U. S. 138.

Confined to Limits Prescribed by Statute

While the appellate powers of the Supreme Court extends to all cases within the judicial power of the United States, actual jurisdiction under the power is confined within such limits as Congress sees fit to prescribe.

The *Francis Wright*, 105 U. S. 385.
St. Louis, etc., R. Co. *v.* Taylor, 210 U. S. 281.

The doctrine of the Constitution and of the cases thus far may be summed up in these propositions: (1) The original jurisdiction of this court can not be extended by Congress to any other cases than those expressly defined by the Constitution. (2) The appellate jurisdiction of this court, conferred by the Constitution, extends to all other cases within the judicial power of the United States. (3) This appellate jurisdiction is subject to such exceptions and must be exercised under such regulations as Congress, in the exercise of its discretion, has made or may see fit to make. (4) Congress not only has not excepted writs of *habeas corpus* and *mandamus* from this appellate jurisdiction, but has expressly provided for the exercise of this jurisdiction by means of these writs.

Ex parte Yerger, 8 Wall. 98.

The affirmation of appellate jurisdiction in the Supreme Court by acts of Congress implies the negation of all such jurisdiction not affirmed.

Ex parte McCardle, 7 Wall. 513.
Durousseau *v.* U. S., 6 Cranch 313.
U. S. *v.* More, 3 Cranch 171.

Giving United States Direct Writ of Error

The act of Congress of March 2, 1907, authorizing a writ of error, on behalf of the United States, from the district or circuit courts directly to the Supreme Court in all criminal cases in which an indictment is quashed or set aside or in which a demurrer to the indictment or any count thereof is sustained, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment is founded, is not invalid because it does not also allow the accused a writ of

error directly to the same court when a demurrer to the indictment or to some count thereof is overruled.

U. S. *v.* Bitty, 208 U. S. 393.

Appeals in Admiralty

Congress has the power to confine the jurisdiction of the Supreme Court on appeals in admiralty to questions at law arising on the record.

The *Francis Wright*, 105 U. S. 386.

In Prize Causes

In prize causes the Supreme Court can exercise appellate jurisdiction only.

The *Alicia*, 7 Wall. 571, holding an act of Congress unconstitutional which attempted to authorize transfer of prize causes from the circuit court to the Supreme Court.

A Writ of Certiorari

A writ of *certiorari* can not be issued by the Supreme Court to review the proceedings of a military commission.

Ex parte Vallandigham, 1 Wall. 251.

Mandamus

The Supreme Court has no power to issue a *mandamus* to the Secretary of State of the United States in the exercise of original jurisdiction. To enable that court to issue a *mandamus* it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable it to exercise appellate jurisdiction.

Marbury *v.* Madison, 1 Cranch 175.
McCluny *v.* Silliman, 2 Wheat. 369.

Habeas Corpus

The Supreme Court may issue a writ of *habeas corpus* in aid of its original jurisdiction.

Ex parte Watkins, 7 Pet. 572.

Except in cases affecting ambassadors, other public ministers, or consuls, and those in which a State is a party, a writ of *habeas corpus* can only be issued by the Supreme Court for the review of a judicial decision of some inferior officer or court.

Ex parte Hung Hang, 108 U. S. 552.
Ex parte Barry, 2 How. 65.

A writ of *habeas corpus* to release a witness committed for contempt was refused by the Supreme Court upon the ground that that court had no appellate jurisdiction in criminal cases.

Ex parte Kearney, 7 Wheat. 38.

The issuance of the writ to determine the legality of the imprisonment of the petitioner under process of an inferior court is an exercise of the appellate jurisdiction of the Supreme Court, and therefore the act of Congress conferring on that court authority to issue the writ is constitutional. This is so even where the original process is not questioned, but only the present right of detainer thereunder, and where petitioner after *habeas corpus* proceedings in the lower court was remanded to the custody of

military officers, but not where the commitment is ordered by a judge in chambers for extradition by the executive under a treaty, in which case the Supreme Court can not issue the writ.

Ex parte Bollman, 4 Cranch 75.
Ex parte Watkins, 7 Pet. 568.
Ex parte Yerger, 8 Wall. 97.
In re Metzger, 5 How. 176.
Ex parte Parks, 93 U. S. 22.
Ex parte Siebold, 100 U. S. 374.
U. S. *v.* Hamilton, 3 Dall. 17.
Ex parte Burford, 3 Cranch 448.
Ex parte Lange, 18 Wall. 166.

Appeal

An appeal is a process of civil law origin and removes a cause entirely, subjecting the fact as well as the law to a review and retrial; but a writ of error is a process of common law, and it removes nothing for examination but the law. Judicial action of all inferior courts established by Congress may, in accordance with the Constitution, be subjected to the appellate jurisdiction of the Supreme Court.

U. S. *v.* Coe, 155 U. S. 83.
Smith *v.* Apple, 264 U. S. 274.

As to the power of the court to review judgments in criminal cases at the instance of the Government under act of March 2, 1907 (34 Stat. 1246), see—

U. S. *v.* Keitel, 211 U. S. 370; followed in—
U. S. *v.* Biggs, 211 U. S. 507;
U. S. *v.* Sullenberger, 211 U. S. 522; and
U. S. *v.* Freeman, 211 U. S. 525.

See also—

U. S. *v.* Evans, 213 U. S. 297, in which an appeal by the United States in a criminal case taken under section 935 of the District of Columbia Code was dismissed, the court holding that such an appeal was practically a moot case and a decision thereon not an exercise of judicial power.

Muskrat *v.* U. S., 219 U. S. 346, holding that it is beyond the power of Congress to provide for a suit of the nature involved in that case to be brought in the Court of Claims, with an appeal to the Supreme Court to test the constitutionality of prior acts of Congress.

Keller *v.* Potomac Elec. Co., 261 U. S. 428, holding void act of Congress providing for appeal from the Court of Appeals of the District of Columbia, where the power attempted to be vested was legislative.

Clause 3.—TRIAL BY JURY.[1]

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

[1] See also Amendment VI, p. 614.

In General

This clause applies only to criminal proceedings in the Federal courts and does not govern trials in State courts. The trial here referred to is the examination of the accused before a competent tribunal, according to the law of the land; it is the hearing and deciding on a criminal charge, and can take place only after that charge has been legally made. Congress must first make an act a crime, affix the penalty, and declare the court having jurisdiction.

Eilenbecker *v.* Plymouth County, 134 U. S. 35.
U. S. *v.* Curtis, 4 Mason 232.
U. S. *v.* Patterson, 150 U. S. 68.
U. S. *v.* Hudson, 7 Cranch 33.
U. S. *v.* Coolidge, 1 Wheat. 415.
U. S. *v.* Britton, 108 U. S. 206.
U. S. *v.* Eaton, 144 U. S. 687.
Nashville, etc., R. Co. *v.* Alabama, 128 U. S. 101.

State law imposing a heavier penalty on a person convicted of a felony if he has twice before been convicted of crimes for each of which he was sentenced to at least three years imprisonment does not impair the right of trial by jury, assuming that the constitutional provision on this point applies to State courts.

McDonald *v.* Massachusetts, 180 U. S. 311.

Contempt proceedings by the circuit court to enforce obedience to its injunction against the obstruction of interstate commerce, and in aid of the protection of property, are not in execution of criminal laws nor an invasion of the right to trial by jury.

In re Debs, 158 U. S. 564.

Clayton Act held unconstitutional as encroachment on judicial power in giving jury trial to persons charged with contempt.

In re Atchison, 284 Fed. 604.

While this clause provides for trial by jury in criminal cases according to settled common-law rules, the sixth amendment declares what those rules are and the two provisions are not conflicting. When the question arises whether the case is one wherein the accused is entitled to a jury, recourse must be had to the principles of the common law which are determinative of that question. Except as to those petty offenses which by common law may be summarily tried, the guaranty of a jury accrues to an accused person the moment he is put on trial.

Callan *v.* Wilson, 127 U. S. 540, in which the act of Congress dispensing with jury in prosecutions by information in the police court of the District of Columbia was held unconstitutional as a basis for conviction for conspiracy.
Schick *v.* U. S., 195 U. S. 69.
Capital Traction Co. *v.* Hof, 174 U. S. 13.

A citizen in civil life in no wise connected with the military service can not be tried by a military commission so long as the

courts are open to hear criminal accusations and redress grievances.

Ex parte Milligan, 4 Wall. 123.

The constitutional guaranty of a jury trial applies to the people of the Territories and to the District of Columbia.

Thompson *v.* Utah, 170 U. S. 346.
Callan *v.* Wilson, 127 U. S. 550.

This right to trial by jury in criminal cases does not extend to ceded territory not made a part of the United States by congressional action without legislation by Congress to that effect.

Dorr *v.* U. S., 195 U. S. 138.

Where the Said Crimes Shall Have Been Committed

The provision as to place of trial has reference only to trials in the Federal courts. Congress has the sole power to prescribe the place for offenses against Federal laws not committed within any State; such an offense is not local and may be tried at such place as Congress may designate. The place of trial may be directed by Congress after the offense has been committed and before proceedings have been commenced.

Nashville, etc., R. Co. *v.* Alabama, 128 U. S. 101.
Jones *v.* U. S., 137 U. S. 211.
U. S. *v.* Dawson, 15 How. 488.
Cook *v.* U. S., 138 U. S. 182.

Congress has the power to enact laws for the arrest, commitment and custody of persons committing offenses against the United States, and such persons are in the exclusive custody of the United States, and not subject to State process or warrant. An offense committed on the high seas is contemplated by this clause, and an act of Congress providing for the punishment of murder on the high seas or in any bay, etc., out of the jurisdiction of any State means that the bay, etc., must be out of the jurisdiction, and not the offense itself.

Logan *v.* U. S., 144 U. S. 263.
U. S. *v.* Jackalow, 1 Black 487.
U. S. *v.* Bevans, 3 Wheat. 390.

The jurisdiction of a court is not affected by the manner in which an accused person is brought before it. Under the act of March 3, 1825, a person is triable for an offense on the high seas in the district into which he is brought, and for this purpose the district in which he is delivered to the marshal is the district into which he is brought, although he is first delivered to State officers in another district for safe-keeping.

Mahon *v.* Justice, 127 U. S. 708.
Jones *v.* U. S., 137 U. S. 211.
U. S. *v.* Arwo, 19 Wall. 490.
Putnam *v.* U. S., 162 U. S. 710.

There is no principle of constitutional law which entitles one to be tried for a criminal offense in the district where he resides.

Haas *v.* Henkel, 216 U. S. 462; but see U. S. *v.* Jackalow, 1 Black 486, in which it was said that crimes are local if committed within a State, and they must then be tried in the district in which the offense was committed.

The physical absence of the accused from the State of Missouri when the acceptance by a St. Louis corporation of his offer to render services in consideration of the compensation forbidden by R. S., sec. 1782, Comp. Stats., sec. 10, 283, was dispatched by mail or telegram, does not deprive the circuit court of the United States for the eastern district of Missouri of jurisdiction of the offense on the theory that the crime was not committed in that State.

Burton *v.* U. S., 202 U. S. 344.

Section 3.—TREASON.

Clause 1.—DEFINITION.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

Power of Congress Limited

No other facts than those defined in the Constitution can be declared to constitute the offense. Congress can neither extend, nor restrict, nor define the crime. Its power over the subject is limited to prescribing the punishment.

U. S. *v.* Greathouse, 4 Sawy. (U. S.), 457.
U. S. *v.* Fries, 3 Dall. 515.

Constitutional Definition of Treason

Statutory Origin of Treason

The two species of treason mentioned in the Constitution are described in it in language borrowed from that of the English statute of treasons.

U. S. *v.* Greiner (4 Phila. (Pa.) 396), wherein the court said that the phrase "levying war" is understood and applied in the United States in the sense in which it has been used in England.

Levying War

There must be an actual assembly for the purpose of effecting a treasonable purpose, to constitute a levying of war.

Ex parte Bollman, 4 Cranch 126.
U. S. *v.* Burr, 25 Fed. Cases No. 14,692.

Successfully to instigate treason is to commit it.

Charge of Grand Jury, 2 Wall. Jr. (C. C.) 134.

It is treason "in levying war against the United States" for persons who have none of the common interest with their fellow citizens, to oppose or prevent, by force, numbers, or intimidation,

a public and general law of the United States, with intent to prevent its operation or compel its repeal. Force is necessary to complete the crime; but the *quantum* of force is immaterial.

U. S. *v.* Fries, 3 Dall. 515.

The commission of acts of violence by a number of persons, with the intention to suppress an office of excise and to compel the resignation of the excise officer, so as to render an act of Congress in effect, null and void, constitutes the crime of high treason in the contemplation of the Constitution and law of the United States.

U. S. *v.* Vigol, 2 Dall. 346.
U. S. *v.* Mitchell, 2 Dall. 348.

To constitute the specific crime of treason war must be actually levied against the United States. However flagitious may be the crime of conspiring to subvert by force the Government of our country, such conspiracy is not treason. To conspire to levy war, and actually to levy war are distinct offenses. The first must be brought into open action by the assemblage of men for a purpose treasonable in itself, or the fact of levying war can not have been committed. To complete the crime of levying war against the United States there must be an actual assemblage of men for the purpose of executing a treasonable design.

Ex parte Bollman, 4 Cranch 126, discharging on a writ of *habeas corpus* parties who had been committed on a charge of treason in the case of U. S. *v.* Bollman, 1 Cranch (C. C.) 373.

Aid and Comfort

He who, being bound by his allegiance to a government, sells goods to the agent of an armed combination to overthrow that government, knowing that the purchaser buys them for that treasonable purpose, is himself guilty of treason or a misprision thereof.

Hanauer *v.* Doane, 12 Wall. 347.

Who May Be Guilty of Treason

If war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors.

Ex parte Bollman, 4 Cranch 126.

An alien, while domiciled in the United States, owes a local and temporary allegiance, which continues during the period of his residence, and he is amenable to the laws of the United States prescribing punishment for treason and for giving aid and comfort to rebellion.

Carlisle *v.* U. S., 16 Wall. 147.

Treason is a breach of allegiance and can be committed by him who owes allegiance either perpetual or temporary.

U. S. *v.* Wiltberger, 5 Wheat. 97.

The Confederate government was never acknowledged by the United States as a *de facto* government in the sense that adherents to it in war against the government *de jure* did not incur the penalties of reason. From a very early period of the Civil War to its close, it was regarded as simply the military representative of the insurrection against the authority of the United States.

Thorington *v.* Smith, 8 Wall. 1.
Sprott v. U. S., 20 Wall. 464.

Evidence Required by the Constitution

Of the overt act of treason there must be proof by two witnesses, and if there be testimony by four witnesses that the defendant was at a certain place, at a great distance from his home, and that he was armed, that the conspiracy was formed at that place, and that the defendant was actually passed on the march to the place where the treasonable acts were to be carried out, the evidence is sufficient, even if there be testimony of only one witness as to his actual presence at the place of attack.

U. S. *v.* Mitchell, 2 Dall. 348.

When a confession is made out of court it is not itself sufficient to convict although proved by two witnesses.

U. S. *v.* Fries, 3 Dall. 515.

Punishment Prescribed by the Constitution

What was intended by the constitutional provision is free from doubt. In England attainders of treason worked corruption of blood and perpetual forfeiture of the estate of the person attained, to the disinheritance of his heirs or of those who would otherwise be his heirs. Thus innocent children were made to suffer because of the offense of their ancestor. When the Federal Constitution was framed, this was felt to be a great hardship, and even rank injustice. For this reason it was ordained that no attainder of treason should work corruption of blood or forfeiture except during the life of the person attainted.

Wallach *v.* Van Riswick, 92 U. S. 202.
Bigelow *v.* Forrest, 9 Wall. 350.

Clause 2.—PUNISHMENT OF TREASON.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

The power to declare the punishment for treason is exclusively in Congress, but in those cases in which this exclusive right of

legislation exists it rests with Congress to determine whether the General Government shall exercise its power to punish exclusively or give to the States a concurrent power.

Houston *v.* Moore, 5 Wheat. 34.

The prohibition against corruption of blood or forfeiture beyond the life of the person attainted was inserted for the benefit of the children and heirs of such person. Only a life estate terminating with the death of the offender could be sold under the confiscation act of 1862, and children of the person whose estate was condemned under that act at his death take the fee simple, by descent as his heirs, and do not derive any title from the United States. The confiscation act was an exercise of the war power and not a criminal proceeding.

Wallach *v.* Van Riswick, 92 U. S. 213.
Bigelow *v.* Forrest, 9 Wall. 350.
Day *v.* Micou, 18 Wall. 156.
Miller *v.* U. S., 11 Wall. 305.
Pike *v.* Wassell, 94 U. S. 714.
Avegno *v.* Schmidt, 113 U. S. 293.
Shields *v.* Schiff, 124 U. S. 356.
Illinois Cent. R. Co. *v.* Bosworth, 133 U. S. 101.

A full pardon by the President of all offenses committed by the owner of property confiscated relieves the owner from forfeiture so far as any right of the Government is concerned, but a pardon can not operate to devest the interest acquired by third persons during the lifetime of the person attainted.

Armstrong's Foundry, 6 Wall. 769.
Wallach *v.* Van Riswick, 92 U. S. 214.
Semmes *v.* U. S., 91 U. S. 21.
Knote *v.* U. S., 95 U. S. 149.
Jenkins *v.* Collard, 145 U. S. 546.

ARTICLE IV

STATES' RELATIONS

ARTICLE IV—STATES' RELATIONS.

Section 1.—FAITH AND CREDIT.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Leading Cases

Hanley *v.* Donoghue, 116 U. S. 1.
Thompson *v.* Whitman, 18 Wall. 457.
Haddock *v.* Haddock, 201 U. S. 562.
Andrews *v.* Andrews, 188 U. S. 14.

Scope of Clause

This clause declares the attributes and qualities which judicial proceedings and records of one State shall have when offered in evidence in the courts of another, and it implies that they shall be given the same effect in the courts of another State as they have by law and usage at home. But this provision, and the laws giving it effect, establish a rule of evidence, and not of jurisdiction; they do not operate to make records and judgments domestic for all purposes but only to give them a general validity and credit as evidence.

McElmoyle *v.* Cohen, 13 Pet. 324.
Chicago, etc., R. Co. *v.* Wiggins Ferry Co., 119 U. S. 622.
Wisconsin *v.* Pelican Ins. Co., 127 U. S. 292.
Cole *v.* Cunningham, 133 U. S. 112.

The full faith and credit demanded is only that faith and credit which the judicial proceedings had in the other State in and of themselves require. It does not demand that a judgment rendered by a court which has jurisdiction of the person but which is in no way responsive to the issues tendered by the pleadings, and is rendered in the actual absence of the defendant, must be recognized as valid in the courts of any other State.

Reynolds *v.* Stockton, 140 U. S. 264.

To the Public Acts and Records

In General

The court does not judicially notice the statutes of a sister State, even under this clause.

Renaud *v.* Abbott, 116 U. S. 277.

Of the Territories

By the act of March 27, 1804, Congress extended the rights under this clause of the Constitution to the public acts, records, judicial proceedings etc., of the Territories of the United States and countries subject to the jurisdiction thereof.

Atchison, etc., R. Co. *v.* Sowers, 213 U. S. 55.
Cooper *v.* Newell, 173 U. S. 567.
Wisconsin *v.* Pelican Ins. Co., 127 U. S. 291.
Swift *v.* McPherson, 232 U. S. 51.

State Constitution

The duty to give full force and effect to the constitution of another State is as obligatory as the similar duty in respect to the judicial proceedings of that State.

Smithsonian Inst. *v.* St. John, 214 U. S. 19.

No Reference to Conduct of Individuals or Corporations

Even if it be assumed that the word "acts" includes "statutes," the clause has nothing to do with the conduct of individuals or corporations.

Minnesota *v.* Northern Securities Co., 194 U. S. 72.

Construction of Statute of Another State

The mere construction by a State court of a statute of another State, without questioning its validity, does not, with possibly some exceptions, deny to it the full faith and credit demanded by the statute in order to give the Federal courts jurisdiction.

Allen *v.* Alleghany Co., 196 U. S. 465.
Penn. Fire Ins. Co. *v.* Gold Issue Min. Co., 243 U. S. 93.
Johnson *v.* New York Life Ins. Co., 187 U. S. 495.

Where, in a State court, the validity of an act of the legislature of another State is not in question, and the controversy turns merely upon its interpretation or construction, no question arises under the "full faith and credit" clause of the Federal Constitution.

Western Life Indemnity Co. *v.* Rupp, 235 U. S. 261.
See also—
Glenn *v.* Garth, 147 U. S. 360.
Lloyd *v.* Matthews, 155 U. S. 227.
Banholzer *v.* New York Life Ins. Co., 178 U. S. 402.
Louisville, etc., R. Co. *v.* Melton, 218 U. S. 36.
Texas, etc., Co. *v.* Miller, 221 U. S. 408.

Effect of Venue Clause of Another Sfate

A statute of another State giving a right of action to an employee when injured should be given full faith and credit and may be sued on in another State notwithstanding the statute also provides that all actions (under the statute) must be brought in a court of competent jurisdiction within that State and not elsewhere.

Tennessee Coal, etc., Co. *v.* George, 233 U. S. 354.

Sec. 1.—Faith and Credit—Public Acts and Records.

Contract Not Controlled by Law of Another State

If a contract can not be regarded as controlled by the law of another State, there is no foundation for the contention that full faith and credit were not given to the public acts and records of that State.

National, etc., Assn. *v.* Brahan, 193 U. S. 647.

Taxation of State Debt

The registered public debt of one State, exempt from taxation by the debtor State, is taxable by another State when owned by a resident of the latter State. No State can legislate except with reference to its own jurisdiction.

Bonaparte *v.* Tax Ct., 104 U. S. 594.

Effect of Statute on Title to Property in Another State

A statute legitimatizing children born out of wedlock does not control the devolution of title to real property in another State by will.

Olmsted *v.* Olmsted, 216 U. S. 386.

Charter of Foreign Fraternal Association

Where all the rights concerning an assessment to be paid to a fraternal corporation have their source in its constitution, resort must be had to that constitution, and the laws of the State in which the corporation was chartered must necessarily be resorted to for the purpose of ascertaining the significance of the corporation's constitution.

Royal Arcanum *v.* Green, 237 U. S. 531.

To Judicial Proceedings

In General

The constitutional requirement that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State is necessarily to be interpreted in connection with other provisions of the Constitution, and therefore no State can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings if they are wanting in the due process of law enjoined by the fundamental law.

Old Wayne, etc., Assn. *v.* McDonough, 204 U. S. 15.
Wetmore *v.* Karrick, 205 U. S. 141.
International Ins. Co. *v.* Sherman, 262 U. S. 346.

Effect of Proceedings of United States Courts

The power to prescribe what effect shall be given to the judicial proceedings of the courts of the United States is conferred by other provisions of the Constitution, such as those which declare the extent of the judicial power of the United States, which authorize all legislation necessary and proper for executing the powers vested by the Constitution in the Government of the United States, and which declare the supremacy of the authority of the National Government within the limits of the Constitution. As part of its general authority, the power to

give effect to the judgments of its courts is coextensive with its territorial jurisdiction.

Embry *v.* Palmer, 107 U. S. 9.
Northern Assur. Co. *v.* Grand View Bldg. Assn., 203 U. S. 106.
Atchison, etc., R. Co. *v.* Sowers, 213 U. S. 55.
Knights of Pythias *v.* Meyer, 265 U. S. 30.

Faith and Credit to Be Given by United States Courts

The courts of the United States are bound to give to the judgments of the State courts the same faith and credit that the courts of one State are bound to give to the judgments of the courts of her sister States.

Cooper *v.* Newell, 173 U. S. 567.
Wisconsin *v.* Pelican Ins. Co., 127 U. S. 291.
Swift *v.* McPherson, 232 U. S. 51.
Hampton *v.* McConnell, 3 Wheat. 234.
Pennington *v.* Gibson, 16 How. 81.
Cheever *v.* Wilson, 9 Wall. 123.
Insurance Company *v.* Harris, 97 U. S. 336.
Gibson *v.* Lyon, 115 U. S. 439.
U. S. *v.* Mason, 213 U. S. 115.

A judgment in a State court which has not been rendered on personal service of process is not one to which Federal courts will give effect.

Pennoyer *v.* Neff, 95 U. S. 729.

Territorial Court in Hawaii

The refusal of a Territorial court in Hawaii, having jurisdiction of the action which was on a policy issued by a New York insurance company, to admit evidence that an administrator had been appointed and a suit brought by him on a bond in the Federal court in New York wherein no judgment had been entered did not violate this clause.

Equitable Life *v.* Brown, 187 U. S. 308.

Judgments in Rem

Holding an express company liable to the consignor of a shipment of liquor which was seized and destroyed under a default judgment rendered in a court of another State in a proceeding in *rem* denies to such judgment full faith and credit where the company notified the consignor of the seizure in time and received from him an assurance that he would contest its legality.

American Exp. Co. *v.* Mullins, 212 U. S. 311.
South Covington, etc., R. Co. *v.* Gest, 34 Fed. 628; appeal dismissed in 131 U. S. 436.

Judgments of Foreign States and Nations

No right, privilege, or immunity is conferred by the Constitution in respect to the judgments of foreign States or nations.

Aetna Life Ins. Co. *v.* Tremblay, 223 U. S. 185.

Sec. 1.—Faith and Credit—Judicial Proceedings.

Protection of Clause Must Be Claimed

The claim of the protection of the full faith and credit clause is without merit when nowhere in its petition for interpleader or in the proceedings had thereunder in the State courts did the intervener set up rights, specifically based on a foreign-State judgment, claim for that judgment an effect which if denied to it would have impaired its force and effect, nor predicate any right to the relief demanded upon the effect due to the foreign-State judgment.

Wabash R. Co. *v.* Flannigan, 192 U. S. 37.

By defending on the merits, after pleading and relying upon a foreign judgment, a party does not waive the benefits of an alleged estoppel arising from the foreign judgment.

Harding *v.* Harding, 198 U. S. 330.

When Merits of Case Pleaded

When the plaintiff alleges his cause of action fully on the merits and on the grounds of the defendant's alleged liability, and the reference to the judgment obtained in another State is primarily if not solely as fixing the amount of the plaintiff's claim, the provisions of this clause have not been invoked and relied on.

Bagley *v.* General Fire Extinguisher Co., 212 U. S. 477.

Enforcement of Fines, Penalties, and Forfeitures

This provision confers no new jurisdiction on the courts of any State, and therefore does "not authorize them to take jurisdiction of a suit or prosecution of such a penal nature that it can not, on settled rules of public and international law be entertained by the judiciary of any other State than that in which the penalty was incurred."

Huntington *v.* Attrill, 146 U. S. 685.
Atchison, etc., Ry. *v.* Nichols, 264 U. S. 348.

Establishing Violation of Right

The burden is upon the party asserting it to establish the failure of a court to give to decrees of a Federal court and the court of another State the due effect to which they are entitled.

Commercial Pub. Co. *v.* Beckwith, 188 U. S. 573.

Effect of Foreign Judgment

Effect declared by act of Congress.—Congress has power to declare what shall be the effect of a judgment of a State court in another State.

McElmoyle *v.* Cohen, 13 Pet. 326.
Alabama State Bank *v.* Dalton, 9 How. 528.
Kenney *v.* Supreme Lodge, 252 U. S. 411.

Rule of evidence and not rule of jurisdiction.—This clause and the act of Congress passed thereunder establish a rule of evidence rather than of jurisdiction.

Wisconsin *v.* Pelican Ins. Co., 127 U. S. 291.
Anglo-American Prov. Co. *v.* Davis Prov. Co., 191 U. S. 374.
Minnesota *v.* Northern Securities Co., 194 U. S. 72.

Judgment recovered in one State is conclusive evidence of the debt in another.

Mills *v.* Duryee, 7 Cranch 484; but see Hilton *v.* Guyot, 159 U. S. 113, holding that a judgment obtained in one State is, in another, but *prima facie* evidence of indebtedness.

Jurisdiction of the person.—To entitle the judgment of a sister State to full faith and credit it must have been rendered with jurisdiction of the person of the defendant.

D'Arcy *v.* Ketchum, 11 How. 165.
German Savings etc., Soc. *v.* Dormitzer, 192 U. S. 125.
Bagley *v.* General Fire, etc., Co., 212 U. S. 477.
Thompson *v.* Thompson, 226 U. S. 551.

Same effect as in State in which rendered.—A judgment of a State court, in a cause within its jurisdiction, and against a defendant lawfully summoned, or against lawfully attached property of an absent defendant, is entitled to as much force and effect against the person summoned or the property attached, when the question is presented for decision in a court of another State, as it has in the State in which it was rendered.

Hanley *v.* Donoghue, 116 U. S. 3.
Bigelow *v.* Old Dominion, etc., Co., 225 U. S. 111.
Green *v.* Van Buskirk, 7 Wall. 140.

No greater effect can be given to any judgment of a court of one State in another State than is given to it in the State where rendered; that is to say, as to whether a judgment is a final or an interlocutory one.

Board of Public Works *v.* Columbia College, 17 Wall. 521.
Robertson *v.* Pickrell, 109 U. S. 610.

Conclusive on the merits.—When duly pleaded and proved, judgments of other States have the effect of being not merely *prima facie* evidence but conclusive proof of the rights thereby adjudicated.

A judgment can not be impeached either in or out of the State by showing that it was based on a mistake of law.

A plea of *nil debet* to an action brought on a judgment obtained in a State court of another State is inadmissible, for, whatever doubts there might be on the words of the Constitution, the act of Congress effectually removes them, declaring in direct terms that the record shall have the same effect in the Federal court as in the court from which it was taken.

Huntington *v.* Attrill, 146 U. S. 685.
Everett *v.* Everett, 215 U. S. 203.
American Exp. Co. *v.* Mullins, 212 U. S. 312.
Fauntleroy *v.* Lum, 210 U. S. 230.
Armstrong *v.* Carson, 2 Dall. 303.

Between same parties and privies.—There is no such relation between the executor and an administrator with the will an-

nexed appointed in another State as will make a decree against the latter binding upon the former, or the estate in his possession. While a judgment against a party may be conclusive, not merely against him but also against those in privity with him, there is no privity between two administrators appointed in different States.

Brown *v.* Fletcher, 210 U. S. 90.

Following judgments as precedents.—This clause relates only to the conclusiveness of such judgments as between the parties to them and their privies. It does not require that judgments in one State shall be followed by the courts of other States as matter of authority in other similar cases. The Constitution does not deal with the question of the effect of such judgments as precedents, nor with the opinions of the courts rendering them. It does not require the courts of one State to follow those of another upon any question, whether upon the construction of local statutes or otherwise.

Wiggins' Ferry Co. *v.* Chicago, etc., R. Co., 11 Fed. 383; affirmed in 108 U. S. 18.
Mitchell *v.* Lenox, 14 Pet. 49.

How effect of judgment ascertained.—Whenever it becomes necessary under this requirement of the Constitution for a court of one State, in order to give faith and credit to a public act of another State, to ascertain what effect it has in that State, the law of that State must be proved as a fact. No court of a State is charged with knowledge of the laws of another State; but such laws are in that court matters of fact, which, like other facts, must be proved before they can be acted upon.

Chicago, etc., R. Co. *v.* Wiggins' Ferry Co., 119 U. S. 622.
Gasquet *v.* Lapeyre, 242 U. S. 367.

No priority, privilege, or lien.—Foreign judgments enjoy, not the right of priority or privilege or lien which they have in the State where they are pronounced, but that only which the *lex fori* gives them by its own laws, in their character of foreign judgments.

No execution can be issued upon judgments rendered in one State without a new suit in the tribunals of other States.

Cole *v.* Cunningham, 133 U. S. 112.
Stacy *v.* Thrasher, 6 How. 61.

Effect of discontinuance of suit in another State.—In permitting a party to show that the entry of discontinuance in a case in another State "was not intended by the parties as a release and satisfaction of the cause of action, but was the result of a promissory agreement on the part of the defendant company which was never complied with," full faith and credit was not refused to the judgment in the other State. Such evidence was properly allowed, not to contradict the necessary legal import

of that judgment, but to show the real meaning of the parties to that suit in agreeing upon its discontinuance.

Jacobs *v.* Marks, 182 U. S. 593.

Effect of statute validating contract held void.—Where a statute has validated a contract which had been held void in a court of another jurisdiction, a judgment rendered on a second action on the contract, brought after the passage of the act, is not void as failing to give full faith and credit to the judgment in the first action.

West Side Belt R. Co. *v.* Pittsburgh Constr. Co., 219 U. S. 92.

Inability to enforce judgment.—If the court has acquired jurisdiction, the judgment is entitled to full faith and credit though the court may not be able to enforce it by execution in the State in which it was rendered, as where the defendant left the State after service upon him and took all his property with him. While the want of power to enforce a judgment or decree may afford a reason against entertaining jurisdiction, it has nothing to do with the validity of a judgment or decree when made.

Michigan Trust Co. *v.* Ferry, 228 U. S. 346.

Defenses that May Be Set Up in Suit on Foreign Judgment

Want of jurisdiction.—This clause applies to the records and proceedings of courts only so far as they have jurisdiction. Whenever they want jurisdiction the records are not entitled to credit. A State court is not obliged to give effect to a decree of a district court void for want of jurisdiction.

Board of Public Works *v.* Columbia College, 17 Wall. 528.
Spokane, etc., R. Co. *v.* Whitley, 237 U. S. 487.
Andrews *v.* Andrews, 188 U. S. 37.
Laing *v.* Rigney, 160 U. S. 542.
Wells *v.* Ford, 238 U. S. 503.
International Ins. Co. *v.* Sherman, 262 U. S. 346.

This provision gives no effect to the judgments of a court which had no jurisdiction of the subject matter or of the parties.

Huntington *v.* Attrill, 146 U. S. 685.
Thormann *v.* Frame, 176 U. S. 356.
Bell *v.* Bell, 181 U. S. 175.
Streitwolf *v.* Streitwolf, 181 U. S. 179.

The constitutional provision does not preclude inquiry into the jurisdiction of the court in which a judgment is rendered or into the facts necessary to give such jurisdiction.

The jurisdiction of a court by which a judgment is rendered in any State may be questioned in a collateral proceeding in another State, notwithstanding the averments contained in the record of the judgment itself.

If full faith and credit were denied to a judgment rendered in another State upon a suggestion of want of jurisdiction, without evidence to warrant the finding, the constitutional requirement would be enforced.

Simmons *v.* Saul, 138 U. S. 448.
Thompson *v.* Whitman, 18 Wall. 457.
Rogers *v.* Alabama, 192 U. S. 231.

Sec. 1.—Faith and Credit—Judicial Proceedings.

Personal service or voluntary appearance.—When the subject matter of a suit is merely the determination of the defendant's liability, it is necessary to the validity of the judgment to require other States to give it full faith and credit, that it should appear from the record that the defendant had been brought within the jurisdiction of the court by personal service of process, or his voluntary appearance, or that he had in some manner authorized the proceeding.

Grover *v.* Radcliff, 137 U. S. 287.
Brown *v.* Fletcher, 210 U. S. 82.
Renaud *v.* Abbott, 116 U. S. 287.
Galpin *v.* Page, 18 Wall. 350.
Winona, etc., R. Co. *v.* Plainview, 143 U. S. 371.
Magruder *v.* Drury, 235 U. S. 106.

Service of process was made on a person while in the State for the purpose of attending the taking of a deposition, according to notice alleged to have been given for the purpose of enticing the defendant into the State. A judgment obtained on such service was entitled to full faith and credit in another State.

When a court acquired jurisdiction of a nonresident defendant a court of another State should give to the proceedings full faith and credit.

If there be a law of a State providing for the attachment of a debt, then, if the garnishee be found in that State and process be personally served upon him therein, the court thereby acquires jurisdiction over him and can garnish a debt and condemn it, provided the garnishee could himself be sued by his creditor in that State, and such a judgment is entitled to full faith and credit in the courts of another State.

Jaster *v.* Currie, 198 U. S. 146.
Baltimore, etc., R. Co. *v.* Hostetter, 240 U. S. 620.
Chicago, etc., R. Co. *v.* Sturm, 174 U. S. 710.
King *v.* Cross, 175 U. S. 399.
Harris *v.* Balk, 198 U. S. 222.
Louisville, etc., R. Co. *v.* Deer, 200 U. S. 176.

A divorce granted in the State which had always been the domicile of the plaintiff and was the only matrimonial domicile was entitled to full faith and credit in the State in which the defendant resided, though she was not personally served with process within the State where the divorce was rendered, where a letter was mailed to her at her residence, as truly stated on oath in the petition, advising her of the nature of the suit as required by the law of the State where the suit was brought.

Atherton *v.* Atherton, 181 U. S. 155.

It has also been settled by the Federal decisions that three conditions are necessary to give a court jurisdiction in *personam* over a foreign corporation: First, it must appear that the corporation was carrying on its business in the State where process

was served on its agent; second, that the business was transacted or managed by some agent or officer appointed by or representing the corporation in such State; third, the existence of some local law making such corporation amenable to suit there as a condition, express or implied, of doing business in the State.

Pembleton *v.* Illinois, etc., Assn., 124 N. E. 355.

Fraud.—This provision does not prevent an inquiry whether the judgment sued upon is founded in and impeachable for a manifest fraud.

Cole *v.* Cunningham, 133 U. S. 112.
American Exp. Co. *v.* Mullins, 212 U. S. 311.
Hilton *v.* Guyot, 159 U. S. 206.
Hanley *v.* Donoghue, 116 U. S. 1.
Wisconsin *v.* Pelican Ins. Co., 127 U. S. 291.

A plea that a judgment was procured by fraud was held bad on general demurrer.

Christmas *v.* Russell, 5 Wall. 305.
Maxwell *v.* Stewart, 22 Wall. 77.

Against public policy of State in which action on judgment brought.—A State court, in sustaining a demurrer to a complaint in a cause of action based upon the decision and judgments of the courts of another State, and upon the statutes of that State has not failed to give full faith and credit to the laws and judgments of that State and its courts, when the courts of the State in which the suit is brought hold that no cause of action is set forth in the pleading and that it is against the public policy of the State to permit an action for such a purpose.

Finney *v.* Guy, 189 U. S. 340.
Andrews *v.* Andrews, 188 U. S. 14.

Powers of States to Legislate on Remedy

There is no direct constitutional inhibition upon the States nor any clause in the Constitution from which it can be plausibly inferred that the States may not legislate upon the remedy in suits upon the judgments of other States, exclusive of all interference with their merits. It being settled that the statute of limitations may bar recoveries upon foreign judgments—that the effect intended to be given under our Constitution to judgments is that they are conclusive only as regards the merits—the common-law principle then applies to suits upon them, that they must be brought within the period prescribed by the local law, the *lex fori*, or the suit will be barred.

Bacon *v.* Howard, 20 How. 25.

Sec. 1.—Faith and Credit—Judicial Proceedings.

McElmoyle *v.* Cohen, 13 Pet. 328.
Alabama State Bank *v.* Dalton, 9 How. 528.
Great Western Tel. Co. *v.* Purdy, 162 U. S. 329.
Christmas *v.* Russell, 5 Wall. 301.

Judgments in Particular Cases Conclusive Vel Non

Law of descent or transmission of land.—A law of a State in which land is situated controls and governs its transmission by will or its passage in case of intestacy, and a court in a State in which land is situated is not controlled by a decree of a court in any other State deciding that the land passed by the law of that State and not according to the law of the State in which the land is situated.

Clarke *v.* Clarke, 178 U. S. 186.

Adoption proceedings in one State are not denied full faith and credit by the operation of the statute of descents in another State which excludes children adopted by proceedings in other States, as a State is the sole mistress of the devolution of land within the State by descent.

Hood *v.* McGehee, 237 U. S. 611.

The probate of a will in one State must be deemed conclusive so far as that State is concerned, and the will held sufficient to pass all property which can be there transferred by a valid instrument of that kind, but such probate does not take the place of provisions necessary to its validity as a will of real property in other States, if they are wanting.

Robertson *v.* Pickrell, 109 U. S. 611.
Darby *v.* Mayer, 10 Wheat. 465.
Burbank *v.* Ernst, 232 U. S. 162.
Tilt *v.* Kelsey, 207 U. S. 43.
Gasquet *v.* Fenner, 247 U. S. 16.

A judgment in a probate proceeding which was merely ancillary to probate proceedings in another State ordering the residue of the estate to be assigned to the legatee and discharging the executor from further liability does not prevent a creditor not a resident of the State in which the judgment was rendered from setting up his claim in the State probate court having the primary administration of the estate.

Borer *v.* Chapman, 119 U. S. 599.

Relating to marriage and divorce.—The Constitution confers no power whatever upon Congress to regulate marriage in the States or its dissolution.

Andrews *v.* Andrews, 188 U. S. 32.
Harding *v.* Harding, 198 U. S. 317.

A judgment of divorce obtained by a husband in a State to which he had gone in disregard of his duty, upon service of process by publication on the wife who had remained in the State of the domicile of matrimony and did not appear in the

cause, is not entitled to full faith and credit outside the State in which the divorce was granted.

Haddock *v.* Haddock, 201 U. S. 562.
Thompson *v.* Thompson, 226 U. S. 551.

Generally speaking, where a decree is rendered for alimony, and is made payable in future installments, the right to such installments becomes absolute and vested on becoming due, and is therefore protected by the full faith and credit clause, provided no modification of the decree has been made prior to the maturity of the installments.

Sistare *v.* Sistare, 218 U. S. 11. See exception, under different conditions, in same case.
See also—
Barber *v.* Barber, 21 How. 582.
Lynde *v.* Lynde, 181 U. S. 186.
Bates *v.* Bodie, 245 U. S. 520.

Judgments by confession.—A judgment by confession entered in one State is entitled to the same faith and credit in a sister State as any other judgment.

Davis *v.* Davis, 164 Fed. 281; judgment reversed in 174 Fed. 786.

Where a State court decides that the validity of a clause in a contract between two railway companies was not in controversy or passed on in causes relating to the same contract in which decrees by consent were rendered in the courts of another State, and that therefore it has authority to pass on the validity of such clause, it does not refuse to give due effect to the final judgment of a court of another State.

Texas, etc., R. Co. *v.* Southern Pac. Co. 137 U. S. 48.

Though a confession of judgment upon a note, with warrant of attorney annexed, in favor of the holder, is in conformity with State law and usage as declared by the highest court of the State in which the judgment is rendered, the judgment when sued on in another State may be collaterally attacked upon the ground that the party in whose behalf it was rendered was not in fact the holder because not the real owner of the note, without doing violence to this clause.

National Exch. Bank *v.* Wiley, 195 U. S. 265.
Grover & Baker, etc., Co. *v.* Radcliffe, 137 U. S. 287.
Harding *v.* Harding, 198 U. S. 317.

Stockholders' liability.—A judgment in an action brought by a receiver of an insolvent corporation to enforce the legal liability of the stockholders is entitled to full faith and credit in the courts of another State.

Converse *v.* Hamilton, 224 U. S. 243.
Marin *v.* Augedahl, 247 U. S. 142.

Assessment and payment of succession or inheritance taxes.—Judicial proceedings in one State, under which inheritance taxes have been paid and the administration upon the estate has

been closed, are denied full faith and credit by the action of a probate court in another State in assuming jurisdiction and assessing inheritance taxes against the beneficiaries of the estate, when under the law of the former State the order of the probate court barring all creditors who had failed to bring in the demand from any further claim against the executors was binding upon all.

Tilt *v.* Kelsey, 207 U. S. 43.
Blackstone *v.* Miller, 188 U. S. 203.

Against one of two joint tort-feasors.—Where a judgment of dismissal was entered in a Federal court in an action against one of two joint tort-feasors, in a State in which such a judgment would constitute an estoppel in another action in the same State against the other tort-feasor, such judgment is not entitled to full faith and credit in an action brought against the other tort-feasor in another State.

Bigelow *v.* Old Dominion, etc., Co. 225 U. S. 111.

Judgment against a corporation which, by the laws of the State in which it is rendered, is binding on the stockholders, must be given by a court of another State the same conclusive effect against a stockholder who is sued therein; and the only defenses which he can make against it are those which he could make in the courts of the State in which it was rendered.

Hancock Nat. Bank *v.* Farnum, 176 U. S. 640.

Decree in home State of life insurance company issuing certificates on assessment plan, in a suit by certificate holders, that company had right to make advances from its mortuary fund to pay death claims and replenish the fund by assessments, held denied full faith and credit, in suit in another State by beneficiary not a party to the original suit.

Hartford Life Ins. Co. *v.* Ibs, 237 U. S. 662.
Hartford Life Ins. Co. *v.* Barber, 245 U. S. 146.

Power to enjoin enforcement of foreign judgments.—The courts of one State have no jurisdiction to enjoin the enforcement of judgments at law obtained in another State, when the same reasons assigned for granting the restraining order were passed upon on a motion for a new trial in the action at law and the motion denied.

Embry *v.* Palmer, 107 U. S. 13.

Decree of dismissal.—A decree of dismissal, not on the merits, is not a bar to a subsequent suit in a court of another jurisdiction.

Swift *v.* McPherson, 232 U. S. 51.

Enforcement in other States.—A judgment enforceable in the State where rendered must be given effect in another State, under

this clause, although the modes of procedure to enforce its collection may not be the same in both States.

Sistare *v.* Sistare, 218 U. S. 1.

No execution can be issued in one State on the judgment of a court of another State without a new suit thereon in the tribunals of the former State.

Cole *v.* Cunningham, 133 U. S. 107.

A judgment recovered in one State against one of two joint defendants will support an action against him in another State although the judgment would have been invalid if rendered in the latter State.

Full faith and credit to a judgment of another State, consisting of an entry stating that, the cause having been settled, it is discontinued by consent, without costs to either party, is not denied by admitting evidence that the discontinuance was not intended as a satisfaction of the cause of action, but was the result of a promissory agreement which was never complied with.

Judgment based on an award of arbitration of controversy growing out of a gambling contract held entitled to credit in a sister State.

Renaud *v.* Abbott, 116 U. S. 277.
Anglo-American Provision Co. *v.* Davis Prov. Co., 191 U. S. 373.
Jacobs *v.* Marks, 182 U. S. 583.
Fauntleroy *v.* Lum, 210 U. S. 230.

Jurisdiction of Supreme Court of United States [1]

The Supreme Court has jurisdiction under this clause when a State supreme court has decided against the effect which it was claimed proceedings in another State had, by the law and usage in that State.

This provision does not require the Supreme Court to assume jurisdiction of a case for the purpose of giving effect to a judgment obtained by a State against a citizen of another State in the courts of the State suing, when the suit was of such a nature that the Supreme Court could not have taken original jurisdiction.

The Supreme Court must judge for itself of the true nature and effect of the order relied on.

Green *v.* Van Buskirk, 7 Wall. 145.
Andrews *v.* Andrews, 188 U. S. 28.
Crapo *v.* Kelly, 16 Wall. 621.
Wisconsin *v.* Pelican Ins. Co., 127 U. S. 293.
Great Western Tel. Co. *v.* Purdy, 162 U. S. 335.
Huntington *v.* Attrill, 146 U. S. 684.

[1] See same subject, p. 474.

Section 2.—CITIZENS.

Clause 1.—PRIVILEGES AND IMMUNITIES.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.[1]

Leading Cases

In Connor *v.* Elliott (18 How. 593), it was said, referring to the phrase "privileges and immunities":

> It is safer and more in accordance with the duty of a judicial tribunal to leave its meaning to be determined, in each case, upon a view of the particular rights asserted and denied therein.

In Ward *v.* Maryland (12 Wall. 430), it was said:

> An attempt will not be made to define the words "privileges and immunities," or to specify the rights which they are intended to secure and protect beyond what may be necessary to the decision of the case before the court.

In Corfield *v.* Coryell (4 Wash. [U. S.] 371), Mr. Justice Washington gave a general definition of the phrase which the courts have, without hesitation, accepted and followed. In his opinion he says:

> The inquiry is, What are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, *fundamental;* which belong, of right, to the citizens of all free governments; and which have at all times been enjoyed by the citizens of the several States which compose this Union. * * * What these fundamental principles are * * * may, however, be all comprehended under the following general heads: protection by the Government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject nevertheless to such restraints as the Government may justly prescribe for the general good of the whole; the right of a citizen of one State to pass through, or to reside in any other State * * * to claim the benefit of the writ of *habeas corpus*; to institute and maintain actions of any kind in the courts of the State; to take, hold, and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State; * * * the elective franchise, as regulated and established by the laws or constitution of the State in which it is to be exercised (p. 380).

See also—

U. S. *v.* Wheeler, 254 U. S. 281.

Paul *v.* Virginia (8 Wall. 168), holding that the term citizen as used in the clause in question applies only to natural persons, members of the body politic, owing allegiance to the State, not to artificial persons created by the legislature, and possessing only the attributes which the legislature has prescribed. At page 180 it was said:

> It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other

[1] See Amend. 14, p. 651, for privileges and immunities of citizens of the United States.

States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.

Slaughter House Cases (16 Wall. 76), in which the definition of privileges and immunities given in Corfield *v.* Coryell, *supra*, and Ward *v.* Maryland, *supra*, was approved. The court said:

The description, when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is instituted.

Cole *v.* Cunningham (133 U. S. 113):

The intention of section 2 of article 4 was to confer on the citizens of the several States a general citizenship and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and this includes the right to institute actions.

In Blake *v.* McClung (172 U. S. 252), Mr. Justice Harlan, after having reviewed the above cases, said:

The foundation upon which the above cases rests can not, however, stand, if it be adjudged to be in the power of one State, when establishing regulations for the conduct of private business of a particular kind, to give its own citizens essential privileges connected with that business which it denies to citizens of other States.

In the same case it was held (p. 259):

A corporation is to be deemed for such purposes a citizen of a State under whose laws it was organized, but it is equally well settled and we now hold that a corporation is not a citizen within the meaning of the constitutional provision.[1]

Nature of Privileges and Immunities

Privileges Belonging to Citizenship

No privileges are secured by this clause except those which belong to citizenship. Rights attached by the law to contracts, by reason of the place where such contracts are made or executed, wholly irrespective of the citizenship of the parties to those contracts, can not be deemed "privileges of a citizen," within the meaning of the Constitution.

Connor *v.* Elliott, 18 How. 593.
See also—
Norfolk, etc., R. Co. *v.* Pennsylvania, 136 U. S. 118.
Pembina, etc., Co. *v.* Pennsylvania, 125 U. S. 186.
Paul *v.* Virginia, 8 Wall. 180.
Maxwell *v.* Bugbee, 250 U. S. 525.

Right to Hold Real and Personal Property

This clause secures and protects the right to acquire personal property and to take and hold real estate.

Ward *v.* Maryland, 12 Wall. 430.

[1] See also Evans' Cases American Constitutional Law, p. 103, note.

Right of Suffrage and Eligibility to Office

A State may, by rule uniform in its operation as to citizens of the several States, require residence within its limits for a given time before a citizen of another State who becomes a resident thereof shall exercise the right of suffrage or become eligible to office. It has never been supposed that regulations of that character materially interfered with the enjoyment by citizens of each State of the privileges and immunities secured by the Constitution to citizens of the several States.

Blake *v.* McClung, 172 U. S. 256.

Privileges Enjoyed by Citizens in Their Own States

The privileges and immunities secured to citizens of each State in the several States by the provision in question are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens. Special privileges enjoyed by citizens in their own States are not secured in other States by this provision. It was not intended by the provision to give to the laws of one State any operation in other States.

Paul *v.* Virginia, 8 Wall. 180.

Of Citizens of State Whose Laws Are Complained of

This provision did not create those rights which it calls privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens.

Slaughter-House Cases, 16 Wall. 77.
See also—
Detroit *v.* Osborne, 135 U. S. 492.
Bradwell *v.* Illinois, 16 Wall. 138.
McKane *v.* Durston, 153 U. S. 687.
Kirtland *v.* Hotchkiss, 100 U. S. 498.

Corporations as Citizens

Corporations are not citizens within the meaning of this clause. The term citizens as there used applies only to natural persons, members of the body politic owing allegiance to the State, not to artificial persons created by the legislature and possessing only the attributes which the legislature has prescribed.

Paul *v.* Virginia, 8 Wall. 177.
See also—
Blake *v.* McClung, 172 U. S. 259.
Norfolk, etc., R. Co. *v.* Pennsylvania, 136 U. S. 118.
Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 45.
Augusta Bank *v.* Earle, 13 Pet. 586.

State statute which provides that no foreign corporation which does not invest or use its capital in the State shall have an

office or offices in that State, unless it shall first have obtained an annual license so to do, does not conflict with this provision.

Pembina, etc., Co. *v.* Pennsylvania, 125 U. S. 182.

The insurance business, for example, cannot be carried on in a State by a foreign corporation without complying with all the conditions imposed by the legislation of that State. So with regard to manufacturing corporations and all other corporations whose business is of a local and domestic nature, which would include express companies whose business is confined to points and places wholly within the State.

Crutcher *v.* Kentucky, 141 U. S. 59.

See also—

Allgeyer *v.* Louisiana, 165 U. S. 583.
Doyle *v.* Continental Ins. Co., 94 U. S. 540.
Ducat *v.* Chicago, 10 Wall. 410.
Liverpool Ins. Co. *v.* Massachusetts, 10 Wall. 573.
American Ins. Co. *v.* King Lbr., etc., Co., 250 U. S. 2.
Chalker v. Birmingham, etc., R. Co., 249 U. S. 522.[1]

Rights or Privileges Secured

Revised Statutes, section 5519, prohibiting conspiracies to deprive any person of rights or privileges secured by State laws, is beyond the legislative power of the United States and is void, as this clause never conferred on Congress the power to punish a citizen for the invasion of the rights of a fellow citizen.

U. S. *v.* Harris, 106 U. S. 629.

This clause does not invest the citizens of one State with any interest in the common property of the citizens of another State.

McCready *v.* Virginia, 94 U. S. 391.

Privileges and immunities of citizens of the United States are not denied by the provisions of Idaho law prohibiting the grazing of sheep on the Federal public domain upon a range previously occupied by cattle.

Omaechevarria *v.* Idaho, 246 U. S. 343.

Legislation Affecting Privileges and Immunities

Construction

If a privilege or immunity has been by the State conferred upon its citizens, and not in terms upon the citizens of other States, such privilege and immunity is not for that reason declared void, but the protecting arm of the Constitution is thrown around the citizens of every other State who thus are embraced within the privilege granted. The converse of the proposition is this, that when a State has sought to impose a burden upon citizens of other States not imposed upon citizens of its own State, such effort is always held to be void.

In re Johnson's Estate, 73 Pac. 424.

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[1] See exceptions as to corporations engaged in interstate and foreign commerce, p. 83.

Taxation and Exemptions[1]

The Constitution does not prohibit the taxation of substantially the same property in different jurisdictions. When a railroad company, which has secured a State franchise to operate its road, afterwards receives a Federal franchise, the State franchise is not merged in the Federal franchise so as to prevent the taxation of the State franchise, the roadbed, etc., of the railroad.

Kidd *v.* Alabama, 188 U. S. 730.
Central Pac. R. Co. *v.* California, 162 U. S. 91.

Taxation of a debt due from a nonresident secured by real estate where the debtor resided held not to violate the guaranty of this clause.

Kirtland *v.* Hotchkiss, 100 U. S. 499.

The products of a State (in this case timber cut in its forests) are liable to be taxed like other property within the State, though intended for exportation to another State, and partially prepared for that purpose by being deposited at a place or port of shipment within the State, such products being owned by person residing in another State.

Coe *v.* Errol, 116 U. S. 517.

None of the privileges and immunities of citizens of the State of New York are denied the beneficiaries under the will of a nonresident by a tax imposed under the New York inheritance tax law, on the transfer, under such will, of debts due to the decedent by citizens of that State.

Blackstone *v.* Miller, 188 U. S. 189.

Statute requiring nonresident merchants to pay license fee higher than residents imposes a discriminating tax and is repugnant to this clause.

Ward *v.* Maryland, 12 Wall. 424.
Downham *v.* Alexandria, 10 Wall. 175.
Woodruff *v.* Parham, 8 Wall. 123.

A State statute is constitutional under this clause which provides that only persons may be licensed thereunder as insurance agents that are residents of the State and have been licensed insurance agents of the State for at least two years.

La Tourette *v.* McMaster, 248 U. S. 465.

Nonresidents are not denied their constitutional privileges and immunities nor the equal protection of the laws by a State tax imposed upon the net income derived by them from property owned within the State, and from any business, trade, or profession carried on within its borders.

Shaffer *v.* Carter, 252 U. S. 37.
Travis *v.* Yale, 252 U. S. 60.
Haavik *v.* Alaska Packers Assn., 263 U. S. 510.
See also—
Maxwell *v.* Bugbee, 250 U. S. 525, as to collateral inheritance taxes.

[1] See same subject, pp. 74, 180, 315, 362, 366, 600, 636, 707, 728, and 745.

State legislation in respect to the taxation of shares of stock in a local corporation held by nonresidents, by which the nonresident pays a certain tax direct to the State and the resident pays the local tax, is not in conflict with this clause, though in a given year the actual workings of the system may result in a larger burden on the nonresident.

Travellers' Ins. Co. *v.* Connecticut, 185 U. S. 371.

Right to Sue

The intention of this provision was to confer on all citizens of the several States a general citizenship and to communicate all the privileges and immunities which the citizens of the same State should be entitled to under like circumstances, and this includes the right to institute actions.

Cole *v.* Cunningham, 133 U. S. 114.
Ward *v.* Maryland, 12 Wall. 430.

Statute of Limitations

State statute of limitation which provides that when the defendant is out of the State the statute shall not run against the plaintiff if the latter resides in the State, but shall if he resides out of the State, is not repugnant to this clause.

Chemung Canal Bank *v.* Lowery, 93 U. S. 76.
Canadian Nor. R. Co. *v.* Eggen, 252 U. S. 553.

Giving Resident Creditors Priority

A State statute, the manifest purpose of which is to give to all creditors who are citizens of the State priority over all creditors residing out of the State, whether the latter were citizens or only residents of some other State or country, infringes rights given by this provision.

Blake *v.* McClung, 172 U. S. 247; 176 U. S. 59.

Communal Rights of Property in Louisiana

The laws of Louisiana provide that a contract of marriage made in that State, or the residence of persons there in the relation created by marriage, shall give rise to certain communal rights on the part of each in property acquired in that State during the marriage. A further law, leaving the rights of nonresident married persons in respect to property in Louisiana to be governed by the laws of their domicile, does not deprive a wife of her rights as a citizen, in property acquired by the husband during marriage in Louisiana.

Connor *v.* Elliott, 18 How. 593.

Sequestrating Property of Alien Enemy During Insurrection

This provision condemns as utterly void an act passed by the Confederate government and enforced by a State as a law of that Commonwealth sequestrating the property held by an alien enemy.

Williams *v.* Bruffy, 96 U. S. 184.

Sec. 2.—Citizens.

Clause 2.—FUGITIVES FROM JUSTICE.[1]

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Leading Cases

In Kentucky *v.* Dennison (24 How. 103) it was said that it was the obvious policy and necessity of this provision to preserve harmony between States and order and law within their respective borders, and to its early adoption by the Colonies and then by the Confederated States, whose mutual interest it was to give each other aid and support whenever it was needed—the conclusion is irresistible that this compact engrafted in the Constitution included, and was intended to include, every offense made punishable by the law of the State in which it was committed.

Ex parte Reggel (114 U. S. 642), holding (p. 651): Concerning the surrender of fugitives from justice the individual States of the Union do not sustain toward the United States the relation which the United States sustains toward other governments. Governments usually surrender fugitives to each other as the result of treaty provisions, and in the absence of such provisions fugitives are not surrendered. But in relation to the States the subject is not determined by treaty, but is controlled by the Constitution and laws of the United States and the States, and it is doubtful whether the States, under the Constitution, could stipulate as to the offenses for which fugitives from justice should be surrendered by them to the United States. The duty of determining who is a fugitive from justice rests upon the governor of the State where the accused is found.

Lascelles *v.* Georgia (148 U. S. 537), holding that after a fugitive has been returned to a demanding State it may try him for any offense which he committed there however different from the one charged in the requisition of the demanding governor without first permitting him to return to the State from which he was extradited.

But the rule is different when a fugitive from justice is extradited under the provisions of a treaty. In such case he can not be punished for an offense different from that for which he has been extradited. This grows out of the treaty provision. Extradition treaties are construed in keeping with the highest and best faith and should not be construed so as to obtain the

[1] See also Art. II, sec. 2, cl. 2, "Extent of the Treaty-Making Power—Over Foreign Extradition," p. 392.

extradition of persons for one offense and their punishment for another.

Johnson *v.* Browne, 205 U. S. 309.
U. S. *v.* Rauscher, 119 U. S. 407.
Collins *v.* Loisel, 262 U. S. 426.

But this provision would not apply when the fugitive had committed an offense after his extradition, and in such case the country to which the fugitive is surrendered is entitled to decide which indictment he shall be tried upon.

Collins *v.* O'Neil, 214 U. S. 113.

In Holmes *v.* Jennison (14 Pet. 596) it was said by Mr. Justice Catron:

> The uniform opinion heretofore has been that the States on the formation of the Constitution had the power of arrest and surrender in such cases (of fugitives from justice); and that so far from taking it away, the Constitution had provided for its exercise, contrary to the will of a State, in case of an unjust refusal, thereby settling, as amongst the States, the contested question whether, on a demand, the obligation to surrender was perfect and imperative, or whether it rested on comity and was discretionary.

In General

The constitutional provision relating to fugitives from justice, as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several States—an object of the first concern to the people of the entire country, and which each State is bound, in fidelity to the Constitution, to recognize.

Appleyard v. Massachusetts, 203 U. S. 222.
McNichols *v.* Pease, 207 U. S. 100.
Innes *v.* Tobin, 240 U. S. 127.
Kentucky *v.* Dennison, 24 How. 66.

A contention that the person whose deportation is sought had no belief when he left the State in which he is alleged to have committed a criminal offense that he had violated its criminal laws, and therefore could not be deemed a fugitive from justice, can not be sustained.

Appleyard *v.* Massachusetts, 203 U. S. 222.
Innes *v.* Tobin, 240 U. S. 127.
Strassheim *v.* Daily, 221 U. S. 280.
Drew *v.* Thaw, 235 U. S. 432.

To be a fugitive from justice within the meaning of this clause it is only necessary that the accused, having been in the demanding State when the crime was committed, thereafter leave that State and be found within another.

Roberts *v.* Reilly, 116 U. S. 80.

A person indicted the second time for the same offense is none the less a fugitive from justice because, after the dismissal of

the first indictment, on which he was originally extradited, he left the State with the knowledge of, or without objection by, the State authorities.

Bassing *v* Cady, 208 U. S. 386.

A fugitive from justice is "charged" with a crime, within the extradition law, only when he is charged lawfully by a person who has knowledge of its commission, or is possessed of information, which he states under oath, leading a reasonable and fair mind to infer its commission.

In re Strauss, 197 U. S. 324.
McNichols *v.* Pease, 207 U. S. 100.

Charged in Any State and Found in Another State

No person may be lawfully removed from one State to another by virtue of this provision, unless: First. He is charged in one State with treason, felony, or other crime; second, he has fled from justice; third, a demand is made for his delivery to the State wherein he is charged with crime. If either of these conditions is absent the Constitution affords no warrant for a restraint of the liberty of any person.

Pierce *v.* Creecy, 210 U. S. 387.
Ex parte Reggel, 114 U. S. 650.
Kopel *v.* Bingham, 211 U. S. 468.

Though the District of Columbia is not included with the constitutional provision, persons charged with having committed offenses in the District may be arrested wherever found and returned to the District for trial, under section 1014, Revised Statutes.

Price *v.* McCarty, 89 Fed. 84.

The Cherokee Nation is neither a State nor a Territory in the sense to be attached to the words when used in the Constitution.

Ex parte Morgan, 20 Fed. 298, holding that the governor of a State could not honor the requisition of the principal chief of the Cherokee Nation.

Treason, Felony, or Other Crime

The words "treason, felony, or other crime," in their plain and obvious import, as well as in their legal and technical sense, embrace every act forbidden and made punishable by a law of the State. The word "crime" of itself includes every offense, from the highest to the lowest in the grade of offenses, and includes what are called "misdemeanors," as well as treason and felony.

Kentucky *v.* Dennison, 24 How. 99.
Appleyard *v.* Massachusetts, 203 U. S. 222.
Lascelles *v.* Georgia, 148 U. S. 543.

Necessity of Legislation by Congress

There is no express grant to Congress of legislative power to execute this provision, and it is not, in its nature, self-executing; but a contemporary construction, contained in the act

of 1793 (1 Stat. 302), ever since continued in force, and now embodied in sections 5278 and 5279 of the Revised Statutes, has established the validity of its legislation on the subject.

Roberts *v.* Reilly, 116 U. S. 94.
Innes *v.* Tobin, 240 U. S. 127.
Mahon *v.* Justice, 127 U. S. 705.
See also—
Kentucky *v.* Dennison, 24 How. 103, holding that the right given to demand implies that there is an absolute right.

Power of Governor

The governor of a State is not authorized to make a demand unless the party is charged in the regular course of judicial proceedings, and he can not lawfully issue a warrant of arrest without a law of the State or an act of Congress to authorize it.

Kentucky *v.* Dennison, 24 How. 104.
Marbles *v.* Creecy, 215 U. S. 63.
Pettibone *v.* Nichols, 203 U. S. 192.

Authority or Duty to Demand or Deliver Persons Accused

The duty to surrender a fugitive is not absolute and unqualified, but depends on circumstances. If the laws of the State have been put in force against the fugitive, and he is imprisoned there, the demands of those laws may first be satisfied. The duty of obedience to a requisition then arises and not before.

Taylor *v.* Taintor, 16 Wall. 371.

Removed by Abuse of Legal Process

Except in the case of a fugitive surrendered by a foreign government, there is nothing in the Constitution, treaties, or laws of the United States which exempts an offender, brought before the courts of a State for an offense against its laws, from trial and punishment, even though brought from another State by unlawful violence, or by abuse of legal process.

Lascelles *v.* Georgia, 148 U. S. 543.
Pettibone *v.* Nichols, 203 U. S. 192.
Kerr *v.* Illinois, 119 U. S. 436.
Cook *v.* Hart, 146 U. S. 183.
Adams *v.* New York, 192 U. S. 585.

Examination and Review of Proceedings

Where a person who had been extradited from Illinois for a violation of a Wisconsin banking law sued out a writ of *habeas corpus* pending trial in a Wisconsin court on the ground that his extradition was in violation of the Constitution and laws of the United States, it was discretionary with the circuit court to refuse to discharge him since it was not an urgent case involving either the authority and operations of the General Government or the obligations of this country to or its relations with foreign nations.

Cook *v.* Hart, 146 U. S. 183.

Provision may be made as has been done by law for a preliminary examination before a judge or commissioner in extradition proceedings, and in such cases the sufficiency of the evidence on which the judge acts cannot be reviewed by any other tribunal, except as provided by statute.

Fong Yue Ting *v.* U. S., 149 U. S. 698.

The person demanded has no constitutional right to be heard before the governor on the questions whether the person demanded has been substantially charged with a crime and whether he is a fugitive from justice.

Munsey *v.* Clough, 196 U. S. 364.

Writ of Habeas Corpus

In Pettibone *v.* Nichols (203 U. S. 192), the court said:

The duty of a Federal court to interfere, on *habeas corpus*, for the protection of one alleged to be restrained of his liberty in violation of the Constitution or laws of the United States, must often be controlled by the special circumstances of the case, and unless in some emergency demanding prompt action the party held in custody by a State * * * will be left to stand his trial in the State court, which, it will be assumed, will enforce—as it has the power to do equally with a court of the United States—* * * any right secured by the supreme law of the land.

See also—

Drew *v.* Thaw, 235 U. S. 432;
Roberts *v.* Reilly, 116 U. S. 94.
Rodman *v.* Pothier, 264 U. S. 399.

Clause 3.—FUGITIVES FROM LABOR.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Object of the Clause

The object of this clause was to secure to the citizens of the slave-holding States the complete right and title of ownership in their slaves as property in every State in the Union into which they might escape. Historically it is known that without this provision the Constitution would not have been adopted, and the Union could not have been formed.

Osborn *v.* Nicholson, 13 Wall. 661.

Exclusive Power of Congress

This clause manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave which no State law or regulation could in any way qualify, regulate, control, or restrain. The slave was not to be dis-

charged from service or labor in consequence of any State law or regulation.

Prigg *v.* Pennsylvania, 16 Pet. 539.
Jones *v.* Van Zandt, 5 How. 229.

The act of Congress, known as the fugitive-slave law, was held constitutional.

Ableman *v.* Booth, 21 How. 506.

Powers of States

State statute providing penalty for harboring a slave fugitive from service was held not to conflict with this clause. As the statute does not impede the master in the exercise of his rights, so neither does it interfere to aid and assist him.

Moore *v.* Illinois, 14 How. 17.

Section 3.—NEW STATES AND TERRITORIES.

Clause 1.—ADMISSION.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Leading Cases

Pollard *v.* Hagan, 3 How. 212.
Knight *v.* U. S. Land Assn. 142 U. S. 183.
Brown *v.* Grant, 116 U. S. 212.
Louisiana *v.* Mississippi, 202 U. S. 1.
Dick *v.* U. S. 208 U. S. 340.
Texas *v.* White, 7 Wall. 700.
Boyd *v.* Nebraska, 143 U. S. 135.
Sands *v.* Manistee River Imp. Co., 123 U. S. 288.

Construction

This clause refers to and includes new States to be formed out of territory yet to be acquired, as well as that already ceded to the United States. New States when admitted have equal sovereignty with the older ones, and are entitled to all the rights of jurisdiction and eminent domain which the original States possessed, whether such equality be stipulated for in the act of admission or not, and this admission on an equal footing involves the adoption as citizens of the United States of those whom Congress recognizes as members of the political community, and who are recognized as such in the formation of the new State. When, also, a State enters into the Union, it solemnly pledges to the other States to support the Constitution as it is, in all its provisions, until altered in the manner which the Constitution

itself provides, and she can not, by a compact with the United States, enlarge or diminish her constitutional rights or liabilities.

Scott *v.* Sandford, 19 How. 612.
Pollard *v.* Hagan, 3 How. 223.
Illinois Central R. Co. *v.* Illinois, 146 U. S. 434.
Ableman *v.* Booth, 21 How. 525.
Permoli *v.* First Municipality, 3 How. 609.
McKinney *v.* Saviego, 18 How. 240.
Cummings *v.* Missouri, 4 Wall. 319.
Ward *v.* Race Horse, 163 U. S. 514.

Power of Congress Limited to Admission

When a new State is admitted into the Union, it is so admitted with all of the powers of sovereignty and jurisdiction which pertain to the original States, and that such powers may not be constitutionally diminished, impaired, or shorn away by any conditions, compacts, or stipulations embraced in the act under which the new State came into the Union, which would not be valid and effectual if the subject of congressional legislation after admission.

Coyle *v.* Smith, 221 U. S. 559.
U. S. *v.* Sandoval, 231 U. S. 28.

Effect of Admission

Transfer of Causes to Federal and State Courts

Whenever a Territory is admitted into the Union as a State, the cases pending in the Territorial courts of a Federal character or jurisdiction are transferred to the proper Federal court, but all such as are not cognizable in the Federal courts are transferred to the tribunals of the new State. Pending cases, where the Federal and State courts have concurrent jurisdiction, may be transferred either to the State or Federal courts by either party possessing that option under the existing laws.

Baker *v.* Morton, 12 Wall. 153.
Glaspell *v.* Northern Pac. R. Co., 144 U. S. 218.

Reorganization and Jurisdiction of Courts

On the admission of Florida as a State, the State had no authority to enact that the records of the former Territorial court of appeals, existing by virtue of Federal laws, should become records of its own courts, or to provide by law for proceedings based thereon.

Hunt *v.* Palao, 4 How. 589.

Formation of New States

The ordinance of the organic convention of the Commonwealth of Virginia, under which the State of West Virginia was organized, and the act of May 13, 1862, of the said Commonwealth, constitute a proposition of the former State that the counties of Jefferson and Berkeley and others might, on

certain conditions, become part of the new State, and the provisions of the constitution of the new State concerning those counties are an acceptance of that proposition.

Virginia *v.* West Virginia, 11 Wall. 39.

Congress, after the admission of Louisiana into the Union, could not take away any portion of that State in admitting Mississippi to the Union, and give it to the latter State.

Louisiana *v.* Mississippi, 202 U. S. 1.

Failure to Provide for Pending Cases

When Congress has passed an act admitting a Territory into the Union as a State, but omitting to provide by such act for the disposal of cases pending in the Supreme Court on appeal or writ of error, it may constitutionally and properly pass a subsequent act making such provision for them.

Freeborn *v.* Smith, 2 Wall. 160.
Benner *v.* Porter, 9 How. 235.

Effect on Indian Treaties

Treaty with an Indian tribe giving the right to hunt on unoccupied lands of the United States in the hunting districts is repealed by a State statute regulating the killing of game within the State, enacted after its admission as a State under an enabling act of Congress declaring that the State is admitted on equal terms with the other States.

Ward *v.* Race Horse, 163 U. S. 507.

Vested Fishing Rights Not Extinguished

The admission of a Territory as a State does not extinguish this treaty right, as the United States, while it holds the country as a Territory, has the power to create rights which will be binding on the States.

U. S. *v.* Winans, 198 U. S. 378.
New York *v.* Becker, 241 U. S. 556.

Rights Remaining in the National Government

The laws of the United States extended over Texas from the time of its admission by Congress, and the seizure of goods thereafter under the revenue laws of the old republic was without authority of law.

Calkin *v.* Cocke, 14 How. 227.

Congress has the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," and pursuant to this power has the exclusive right to control and dispose of public and unoccupied lands, to which the United States has acquired title, either by deeds of cession from other States, or by treaty with a foreign country; and no State can interfere with this right or embarrass its exercise.

Van Brocklin *v.* Tennessee, 117 U. S. 167.

The right of the United States to public lands originated in voluntary surrenders made by several of the old States of their waste and unappropriated lands to the United States under a resolution of the old Congress of September 6, 1780, recommending such surrender and cession to aid in paying the public debt incurred by the Revolution.

Pollard *v.* Hagan, 3 How. 224.

Rights Acquired by a New State

On Equal Footing with the Old States

The right of every new State to exercise all the powers of government which belong to and may be exercised by the original States of the Union must be admitted and remain unquestioned except so far as they are temporarily deprived of control over the public lands.

Pollard *v.* Hagan, 3 How. 223.
McCabe *v.* Atchison, etc., R. Co., 235 U. S. 151.
Illinois Cent. R. Co. *v.* Illinois, 146 U. S. 434.
Knight *v.* U. S. Land Assn., 142 U. S. 183.
Escanaba Co. *v.* Chicago, 107 U. S. 688.
Weber *v.* Harbor Comrs., 18 Wall. 65.

The true constitutional equality between the States only extends to the right of each, under the Constitution, to have and enjoy the same measure of local or self government, and to be admitted to an equal participation in the maintenance, administration, and conduct of the common or national government.[1]

Case *v.* Toftus, 39 Fed. 732.

General Civil and Criminal Jurisdiction

Upon the admission of a State into the Union, the State doubtless acquires general jurisdiction, civil and criminal, for the preservation of public order, and the protection of persons and property, throughout its limits, except where it has ceded exclusive jurisdiction to the United States.

Van Brocklin *v.* Tennessee, 117 U. S. 167.

Appellate procedure in a case begun in a United States court of the Territory and transferred to a State court under the operation of the enabling act and the new State constitution is governed by the State statutes and practice.

John *v.* Paullin, 231 U. S. 583.

Title to Property Owned by Territory

Unless otherwise declared by Congress, the title to every species of property owned by a Territory passes to the State upon its admission into the Union.

Brown *v.* Grant, 116 U. S. 212.

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[1] As to status of citizens of States admitted to the Union, see "Naturalization," Art. I, sec. 8, cl. 4, p. 202.

Effect of U. S. Patent to Shore Lands

Grants by Congress of portions of the public lands within a territory to settlers thereon, though bordering on or bounded by navigable waters, convey, of their own force, no right or title below high-water mark.

Shively *v.* Bowlby, 152 U. S. 1.
Joy *v.* St. Louis, 201 U. S. 332.

Control of Navigable Waters

New States have the same rights, sovereignty, and jurisdiction over the shores of navigable waters and the soils thereunder as the original States, and the acts of Congress admitting a State into the Union providing "that all navigable waters within the said State shall forever remain public highways, free to the citizens of said State, and of the United States, without any tax, duty, impost, or toll therefor, imposed by said State," conveys no more power over the navigable waters of such State to the Government of the United States than it possesses over the navigable waters of other States under the provisions of the Constitution.

Pollard *v.* Hagan, 3 How. 223.
Coyle *v.* Smith, 221 U. S. 559.
Goodtitle *v.* Kibbe, 9 How. 471.
Doe *v.* Beebe, 13 How. 25.[1]

Michigan on her admission became entitled to and possessed of all the rights of sovereignty and dominion which belonged to the original States, and could at any time afterwards exercise full control over its navigable waters except as restrained by the Constitution and laws of Congress.

Sands *v.* Maniste River Imp. Co., 123 U. S. 288.
See also—
Withers *v.* Buckley, 20 How. 92.
Willamette Iron Brdg. Co. *v.* Hatch, 125 U. S. 9.
Cincinnati *v.* Louisville, etc., R. Co., 223 U. S. 390.
Huse *v.* Glover, 119 U. S. 543.

Clause 2.—GOVERNMENT OF TERRITORIES.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Leading Cases

In Kansas *v.* Colorado (206 U. S. 89) the court said:

The full scope of this paragraph has never been definitely settled. Primarily it is the grant of power to the United States of control over its

[1] See also "Navigation," Art. I, sec. 8, cl. 3, p. 111.

property. * * * But clearly it does not grant to Congress any legislative control over the States; and must, so far as they are concerned, be limited to authority over the property belonging to the United States within their limits.

In Dorr *v.* U. S. (195 U. S. 143), referring to the power of Congress over Territories, the court said:

Until Congress shall see fit to incorporate territory ceded by treaty into the United States, we regard it as settled * * * that the Territory is to be governed under the power existing in Congress to make laws for such Territories and subject to such constitutional restrictions upon the powers of that body as are applicable to the situation.

In Murphy *v.* Ramsey (114 U. S. 44) it was said:

The people of the United States, as sovereign owners of the National Territories, have supreme power over them and their inhabitants. In the exercise of this sovereign dominion they are represented by the Government of the United States, to whom all the powers of government over that subject have been delegated, subject only to such restrictions as are expressed in the Constitution, or are necessarily implied in its terms, or in the purposes and objects of the power itself. * * * But in ordaining government for the Territories, and the people who inhabit them, all the discretion which belongs to legislative power is vested in Congress; and that extends beyond all controversy, to determining by law, from time to time, the form of the local government in a particular Territory and the qualification of those who shall administer it.

In U. S. *v.* Kagama (118 U. S. 380) it was held:

The power of Congress to organize Territorial governments and make laws for their inhabitants arises not so much from the clause in the Constitution in regard to disposing of and making rules and regulations concerning the Territory and other property of the United States, as from the ownership of the country in which the Territories are, and the right of exclusive sovereignty which must exist in the National Government and can be found nowhere else.

In Camfield *v.* U. S. (167 U. S. 525) the court said:

While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a State which it would have within a Territory, we do not think the admission of a Territory as a State deprives it of the power of legislating for the protection of the public lands, though it may thereby involve the exercise of what is ordinarily known as the police power, so long as such power is directed solely to its own protection. A different rule would place the public domain of the United States completely at the mercy of State legislation.

Clinton *v.* Englebrecht (13 Wall. 434) contains a full history of the organization and status of Territories.

See U. S. *v.* Gratiot (14 Pet. 526) for a definition of the word "Territory," as used in this clause.

Scott *v.* Sandford, 19 How. 449.
American Ins. Co. *v.* Canter, 1 Pet. 511.
Mormon Church *v.* U. S., 136 U. S. 1.
Thompson *v.* Utah, 170 U. S. 343.
Downes *v.* Bidwell, 182 U. S. 244.
Miners' Bank *v.* Iowa, 12 How. 1.
Rassmussen *v.* U. S., 197 U. S. 516.
National Bank *v.* County of Yankton, 101 U. S. 129.
Santiago *v.* Nogueras, 214 U. S. 265.

Powers of Congress to Legislate for Territories

In General

The power of governing and of legislating for a Territory is the inevitable consequence of the right to acquire and to hold territory.

Sere *v.* Pitot, 6 Cranch 336.

This clause has been considered the foundation upon which the Territorial governments rest.

U. S. *v.* Gratiot, 14 Pet. 537.
Downes *v.* Bidwell, 182 U. S. 267.
De Lima *v.* Bidwell, 182 U. S. 196.

Congress may legislate directly in respect to the local affairs of a Territory.

Binns *v.* U. S., 194 U. S. 491.

In the Territories, Congress has the entire dominion and sovereignty, national and local, Federal and State, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State.

Simms *v.* Simms, 175 U. S. 168.
U. S. *v.* McMillan, 165 U. S. 510.

The act of Congress of June 11, 1906, known as the employers' liability act, was held valid as applied to causes of action arising within the District of Columbia and the Territories.

El Paso etc., R. Co. *v.* Gutierrez, 215 U. S. 87.

Congress may transfer the power of legislation in respect to local affairs to a legislature elected by the citizens of a Territory.

Binns *v.* U. S., 194 U. S. 491.
Sere *v.* Pitot, 6 Cranch 336.
Murphy *v.* Ramsey, 114 U. S. 44.

Congress Has Supervisory Legislative Control

In general.—Without an express reservation, Congress has the power to amend the acts of the Territorial legislatures. Such a power is an incident of sovereignty, and continues until granted away. Congress may not only abrogate laws of the Territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the Territorial legislature valid, and a valid act void.

National Bank *v.* Yankton County, 101 U. S. 133.
See also—
U. S. *v.* McMillan, 165 U. S. 510.
Snow *v.* U. S., 18 Wall. 319.
Miners' Bank *v.* Iowa, 12 How. 1.
Atchison, etc., R. Co. *v.* Sowers, 213 U. S. 55.

The personal and civil rights of the inhabitants of the Territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, State and National; their political rights are

franchises which they hold as privileges in the legislative discretion of Congress.

Murphy *v.* Ramsey, 114 U. S. 44.

The power to govern territory, implied in the right to acquire it, and given to Congress in the Constitution, to whatever other limitation it may be subject, the extent of which must be decided as questions arise, does not require that body to enact for ceded territory, not made a part of the United States by congressional action, a system of laws which shall include the right of trial by jury, and that the Constitution does not, without legislation and of its own force, carry such right to territory so situated.

Dorr *v.* U. S., 195 U. S. 149.

Where the Constitution has been once formally extended by Congress to Territories, neither Congress nor the Territorial legislature can enact laws inconsistent therewith.

Downes *v.* Bidwell, 182 U. S. 271.

Alaska is a Territory of the United States within the meaning of the interstate commerce act.

I. C. C. *v.* U. S., 224 U. S. 474.
Binns *v.* U. S., 194 U. S. 486.
Steamer *Coquitlam v.* U. S., 163 U. S. 346.

The United States district court for Porto Rico was created under the authority of this clause.

Balzac *v.* Porto Rico, 258 U. S. 298.

No annulment of Territorial statute by implication.—In order to subject a Territorial statute to the annulling clause of an act of Congress, the conflict should be direct and unmistakable. No law will be declared void because it may indirectly, or by a possible, and not a necessary, construction, be repugnant to an annulling act.

Cope *v.* Cope, 137 U. S. 686.

Validating county bonds.—It is within the power of Congress to validate bonds issued by a county in a Territory when their only defect was that they had been issued in excess of the powers conferred upon the Territorial municipalities by the act of Congress giving the Territory authority to issue bonds for debts or obligations necessary to the administration of the internal affairs of the county.

Utter *v.* Franklin, 172 U. S. 423.

Revocation of charter of Mormon Church.—The revocation of the charter of the Mormon Church was a constitutional exercise of the power of Congress over Territories and of the power ex-

pressly reserved in the organic act establishing the Territory of Utah.

Mormon Church *v.* U. S., 136 U. S. 47.

Legislative power of a Territory.—A Territorial legislature has all the legislative power except as limited by the Constitution of the United States and the organic act and the laws of Congress appertaining thereto.

Walker *v.* New Mexico, etc., R. Co., 165 U. S. 604.

Congress has enacted that, with certain restrictions, "the legislative power of every Territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and laws of the United States." (R. S. sec. 1851; act of July 30, 1886, chap. 818, 24 Stat. L., 170.) The power so conferred upon a Territorial assembly covers the domestic relations, the settlement of estates, and all other matters which, within the limits of a State, are regulated by the laws of the State only.

Simms *v.* Simms, 175 U. S. 163.

For assessment and collection of taxes.—The power to legislate delegated to a Territorial legislature includes the right to pass uniform laws for the assessment and collection of taxes, and a Territorial statute under which it is competent for the taxing authorities of an organized county to levy and collect taxes on personal property situated within the attached reservations of Indians, and belonging to other persons than Indians, is valid.

Wagoner *v.* Evans, 170 U. S. 591.
Thomas *v.* Gay, 169 U. S. 264.

Territorial courts are legislative courts created in virtue of the general right of sovereignty which exists in the Government, or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States. The jurisdiction with which they are invested is not a part of that judicial power which is defined in the third article of the Constitution, but is conferred by Congress in the execution of those general powers which that body possesses over the Territories of the United States.

American Ins. Co. *v.* Canter, 1 Pet. 546.
U. S. *v.* McMillan, 165 U. S. 510.
Clinton *v.* Englebrecht, 13 Wall. 447.

Defining jurisdiction of the courts.—It is within the competency of Congress either to define directly, by their own act, the jurisdiction of the courts created by them or to delegate the authority requisite for that purpose to the Territorial government; and by either proceeding to permit or to deny the trans-

fer of any legitimate power or jurisdiction previously exercised by the courts of the provisional government to the tribunals of the government they were about to substitute for the Territory in lieu of the temporary or provisional government.

Leitensdorfer *v.* Webb, 20 How. 182.

Absence of distinction between Federal and State jurisdictions.—The Territorial governments are legislative governments, and their courts legislative courts; Congress, in the exercise of its powers in the organization and government of the Territories, combines the powers of both the Federal and State authorities.

Benner *v.* Porter, 9 How. 242.

Exercise of admiralty jurisdiction.—Although admiralty jurisdiction can be exercised in the States in those courts only which are established in pursuance of the third article of the Constitution, the same limitation does not extend to the Territories. In legislating for them, Congress exercises the combined powers of the General and of a State Government.

American Ins. Co. *v.* Canter, 1 Pet. 545.

Sovereign power over acquired territory.—Power to acquire territory either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined; but if a nation is entirely subdued, or in case it be destroyed and ceases to exist, the right of occupation becomes permanent, and the title vests absolutely in the conqueror.

U. S. *v.* Huckabee, 16 Wall. 434.

Control of public lands—*In general.*—No appropriation of public land can be made for any purpose but by authority of Congress.

U. S. *v.* Fitzgerald, 15 Pet. 421.
California *v.* Deseret Water, etc., Co., 243 U. S. 415.
Utah Power, etc., Co. *v.* U. S., 243 U. S. 389.

Power to dispose of public lands.—The words "dispose of" vest in Congress the power not only to sell but also to lease the lands of the United States. The disposal must be left to the discretion of Congress.

U. S. *v.* Gratiot, 14 Pet. 538.

Exemption from debts of land conveyed.—Revised Statutes, section 2296, provides as follows:

> No lands acquired under the provisions of this [homestead] act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent thereof.

This statute has been held to be constitutional as against the contention that Congress had no power to restrict alienation of

homestead lands after conveyance by the United States in fee simple.

Ruddy *v.* Rossi, 248 U. S. 104.

Power to declare mode of conveyance.—Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property or any part of it and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarrass its exercise.

Gibson *v.* Chouteau, 13 Wall. 99.
Irvine *v.* Marshall, 20 How. 558.
Emblem *v.* Lincoln Land Co., 184 U. S. 664.

Grants below high-water mark.—Congress has the power to make grants of lands below high-water mark of navigable waters in any Territory of the United States, whenever it becomes necessary to do so in order to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce or to carry out other public purposes appropriate to the objects for which the United States hold the Territory.

Shively *v.* Bowlby, 152 U. S. 48.
McGilvra *v.* Ross, 215 U. S. 70.

Power to declare effect of titles.—Congress has the sole power to declare the dignity and effect of titles emanating from the United States; and the whole legislation of the Federal Government, in reference to the public lands, declares the patent the superior and conclusive evidence of legal title; until its issuance, the fee is in the Government, which, by the patent, passes to the grantee, and he is entitled to recover the possession in ejectment.

Bagnell *v.* Broderick, 13 Pet. 450.
Field *v.* Seabury, 19 How. 332.

Patents and rights acquired by entry and occupancy.—A State has no power to declare any title less than a patent valid against a claim of the United States to the land, or against a title held under a patent granted by the United States.

Wilcox *v.* McConnel, 13 Pet. 516.

Mere possession of public land without title for any time, however long, will not enable a party to maintain a suit against one deriving his title from the Government.

Burgess *v.* Gray, 16 How. 65.

The occupation of lands derived from the United States before the issue of a patent for the period prescribed by the statute of limitation of a State for the commencement of actions for the recovery of real property is not a bar to ejectment founded on the legal title conveyed by the patent.

Gibson *v.* Chouteau, 13 Wall. 102.

A party, by mere settlement on public land with a declared intention to obtain title under the pre-emption laws, does not thereby acquire such a vested interest in the premises as to deprive Congress of the power to divest it by grant to another.

Yosemite Valley Case, 15 Wall. 86.

Under this clause and Revised Statutes, section 2289, et seq., providing for a homestead entry by a citizen on public land, and the completion of title under such entry, the right to make a homestead entry is protected by law forbidding any conspiracy to intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.

U. S. *v.* Waddell, 112 U. S. 76.

Under this clause Congress has passed laws by which title to public lands is conveyed to individuals by patents.

U. S. *v.* American Bell Tel. Co., 128 U. S. 315.

Power to withdraw public lands from sale or settlement.—Congress may withdraw public lands of the United States from settlement without the consent of the State in which it is located, and may prohibit grazing thereon.

Light *v.* U. S., 220 U. S. 523.

Power to cancel grants for violation of covenants.—Congress had the power, by act of June 9, 1916, known as the Chamberlain-Ferris Act, to revest in the United States the title to lands which had been granted to a railroad company on certain conditions, which conditions had been violated.

Oregon, etc., R. Co. *v.* U. S., 243 U. S. 549.

Reclamation of public lands.—The acts of Congress for the reclamation of public lands are within the power of Congress under this clause.

U. S. *v.* Hanson, 167 Fed. 881. Compare
Kansas *v.* Colorado, 206 U. S. 91.

Power to prevent unlawful occupation.—Act of Congress passed to prevent unlawful occupation of public lands is valid.

Camfield *v.* U. S. 167 U. S. 525.
Jourdan *v.* Barrett, 4 How. 169.

Validity of grants prior to acquisition of territory by United States.—The question of the validity of grants obtained prior to the acquisition of territory by the United States is for the consideration of Congress, and the courts are concluded by the action of that body.

Tameling *v.* U. S. Freehold, etc., Co., 93 U. S. 663.
Maxwell Land-Grant Case, 121 U. S. 366.

Power to delegate to States authority to make regulations.—Congress may delegate to State legislatures the making of addi-

tional regulations respecting the disposal of and acquiring title to public lands.

Butte City Water Co. *v.* Baker, 196 U. S. 126.

Powers of Congress Over Other Property

In General

The control, enjoyment, and disposal by the United States of their own property is independent of the locality of such property, whether it be situated in a State or Territory.

Irvine *v.* Marshall, 20 How. 563.

The General Government has power, in legislating for the protection of its own property situated within the several States, analogous to the police powers of a State, and may declare what are nuisances, as affecting such property, and provide for their abatement.

Camfield *v.* U. S., 167 U. S. 518.

While the full scope of this section has never been definitely settled, it is primarily a grant of power to the United States of control over its property; this control is exercised to the same extent that an individual can control his property.

Light *v.* U. S., 220 U. S. 523.

Protection of Migratory Birds[1]

Migratory birds are not, when in the course of their migration, the property of the United States within this clause; and act of March 4, 1913, protecting such birds, can not be sustained as an exercise of the power to protect the property of the United States.

U. S. *v.* Shauver, 214 Fed. 154.
U. S. *v.* McCullagh, 221 Fed. 288.

In U. S. *v.* Samples (258 Fed. 479) it was held that, notwithstanding the holding above, a similar act of Congress giving effect to a convention between the United States and Great Britain for the protection of migratory birds was valid and not unconstitutional. This holding was affirmed in Missouri *v.* Holland (252 U. S. 416), in which the court said (p. 433):

> It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, a power which must belong to and somewhere reside in every civilized government is not to be found.

Power to Grant and Convey

Congress has power in its discretion to authorize the leasing of lead mines on public lands in the Territories. There can be no apprehension of any encroachments upon the State rights by the creation of a numerous tenantry within the borders of the States from the adoption of such measures.

U. S. *v.* Gratiot, 14 Pet. 537.

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[1] See "Birds and game," under commerce clause, p. 136.

Congress has the sole power to declare the dignity and effect of titles emanating from the United States.

Bagnell *v.* Broderick, 13 Pet. 450.

Whenever the question is whether title has passed the question must be resolved by the laws of the United States; but whenever title has passed according to those laws, then the property is subject to State legislation consistent with the admission that the title passed according to the laws of the United States.

Wilcox *v.* McConnel, 13 Pet. 511.

The lands of the United States lying within the States are subject to sale under the authority of Congress as lands may be sold by individual owners, and remedies may be employed by the United States as owners that are applicable in cases of other owners.

U. S. *v.* Hughes, 11 How. 568.
Irvine *v.* Marshall, 20 How. 561.
Johnson *v.* Towsley, 13 Wall. 85.
U. S. *v.* Schurz, 102 U. S. 395.

Purchase of Property Captured by United States

Purchasers from the United States of property bought by the Confederate Government and captured by the United States obtained a good title.

U. S. *v.* Huckabee, 16 Wall. 434.

Executive Department Can Not Sell Public Property

The Treasury Department has no right to sell public property without the authority of an act of Congress for that purpose, and can not ratify an unauthorized sale by the War Department.

U. S. *v.* Nicoll, 1 Paine (U. S.), 646.

Power of President to Withdraw Public Lands

The power of the President to withdraw public lands from entry has been so long exercised and recognized by Congress as to be equivalent to a grant of power.

U. S. *v.* Midwest Oil Co., 236 U. S. 459.

State Legislation Affecting Public Lands and Grants

In General

For many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use, and to prescribe in what manner others may acquire rights in them.

Utah Power, etc., Co. *v.* U. S., 243 U. S. 389.

State's Right of Eminent Domain

The State can not exercise the power of eminent domain over lands of the United States within a State.

Utah Power, etc., Co. *v.* U. S., 243 U. S. 389.
U. S. *v.* Chicago, 7 How. 194.

State Can Not Tax United States Property[1]

The public domain within a State is exempt from State taxation.

Wisconsin Cent. R. Co. *v.* Price County, 133 U. S. 496.
Pollard *v.* Hagan, 3 How. 224.

A sale of public land owned by the United States for State taxes is invalid.

McGoon *v.* Scales. 9 Wall. 27.

Land conveyed by the United States to a corporation for dry-dock purposes is not entirely exempt from taxation as an agency of the United States, because of a reservation of the right to the free use of the dock and a forfeiture in case of its continued unfitness for use, or the use of the land for other purposes.

Baltimore Shipbuilding, etc., Co. *v.* Baltimore, 195 U. S. 375.

When State Laws Regulating Disposition Attach

Whenever the question in any court, State or Federal, is whether a title to land which had once been the property of the United States has passed, that question must be resolved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, then that property, like all other property in the State, is subject to the State legislation, so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States. The State has undoubted right to legislate as she may please in regard to the remedies to be prosecuted in her courts, and to regulate the disposition of the property of her citizens by descent, devise, or alienation.

Wilcox *v.* McConnel, 13 Pet. 517.

Conflicting State Legislation

The power of Congress in the disposition of the public domain can not be interfered with or its exercise embarrassed by any State legislation, nor can such legislation deprive the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition.

Gibson *v.* Chouteau, 13 Wall. 99.
U. S. *v.* Fitzgerald, 15 Pet. 421.

Section 4.—FORM OF STATE GOVERNMENT.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of

[1] See same subject, pp. 79 and 635.

the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Leading Cases

In Luther *v.* Borden (7 How. 1) the court said:

As the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not, and when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority and its decision is binding on every other department of the Government (p. 42).

In Martin *v.* Mott (12 Wheat. 30), in speaking of the existence of the exigency in which the protection of the United States is necessary, it was held:

We are all of opinion that the authority to decide whether the exigency has arisen belongs exclusively to the President, and that his decision is conclusive upon all other persons. We think that this construction necessarily results from the nature of the power itself, and from the manifest object contemplated by the act of Congress. The power itself is to be exercised upon sudden emergencies, upon great occasions of State, and under circumstances which may be vital to the existence of the Union. A prompt and unhesitating obedience to orders is indispensable to the complete attainment of the object.

In re Duncan (139 U. S. 461): The distinguishing feature of the republican form of government is the right of the people to choose their own officers for governmental administration and to pass their own laws; by virtue of the legislative power reposed in representative bodies and by the adoption of a constitution the people limit their own power as against the sudden impulses of mere majorities.

Texas *v.* White (7 Wall. 700): As used in this section the word "State" is used to indicate a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. A plain distinction is made between a State and the government of a State.

In Pacific States Tel., etc., Co. *v.* Oregon (223 U. S. 118), it was said that whether a State has ceased to be republican in form, because of the adoption of the initiative and referendum, is a political question, solely for Congress.

A Republican Form of Government

In General

In Minor *v.* Happersett (21 Wall. 175) the court said:

No particular Government is designated as republican. Neither is the exact form to be guaranteed, in any manner especially designated. * * * The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. All the States had governments

when the Constitution was adopted. In all, the people participated to some extent, through their representatives elected in the manner specially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is therefore to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of what was republican in form, within the meaning of that term as employed in the Constitution.

See also—

In re Duncan, 139 U. S. 461.

This section expresses the full limit of national control over the internal affairs of a State.

South Carolina *v.* U. S., 199 U. S. 454.

Legislative Control of Boundaries of Municipal Corporations

The determination of the territorial boundaries of a municipal corporation is purely a legislative function, but there is nothing in the Federal Constitution to prevent the people of a State from giving, if they see fit, full jurisdiction over such matters to the courts and taking it entirely away from the legislature. The preservation of legislative control in such matters is not one of the essential elements of a republican form of government which the United States are bound to guarantee to every State in the Union.

Forsyth *v.* Hammond, 166 U. S. 519.

A statute changing the boundaries of a school district, giving to the new district the property within its limits which had belonged to the former district, and requiring the new district to assume and pay the debts and obligations of the old district, is compatible with a republican form of government, even if it be admitted that this section applies to the creation of, or the powers or rights of property of, the subordinate municipalities of the State.

Kies *v.* Lowrey, 199 U. S. 233.

Conflicting Claims to Office of Governor

The enforcement of the guaranty to every State of a republican form of government belongs to the political department, and can not be said by the courts to have been denied by the action of the general assembly in a contest for the office of governor.

Taylor *v.* Beckham, 178 U. S. 578.

Power of Congress

The power to carry into effect the clause of guaranty is primarily a legislative power and resides in Congress.

Texas *v.* White, 7 Wall. 730.
Marshall *v.* Dye, 231 U. S. 250.
Mountain Timber Co. *v.* Washington, 243 U. S. 219.

This clause does not recognize the power of the United States or require them to do mere police duty in the States.

U. S. *v.* Cruikshank, 92 U. S. 556.

Sec. 4.—Form of State Government—Power of Congress.

The question whether the initiative and referendum preserve to a State a republican form of government is a political one and not judicial, and is for Congress and not for the courts to determine.[1]

Pacific States Tel., etc., Co., *v.* Oregon, 223 U. S. 118.
Kiernan *v.* Portland, 223 U. S. 151.
Davis *v.* Ohio, 241 U. S. 565.

It was competent for Congress to provide, by the act of February 28, 1795, that—

In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State or of the executive (when the legislature can not be convened), to call forth such number of the militia of any other State or States, as may be applied for, as he may judge sufficient to suppress such insurrection.

Luther *v.* Borden, 7 How. 43.

[1] See also amendments 18 and 19, pp. 747 and 757.

ARTICLE V

MODE OF AMENDMENT

ARTICLE V.—MODE OF AMENDMENT.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

In General

All of the amendments proposed by the first session of Congress, consisting of the first ten, were intended to apply only to the Federal Government, and not as restrictions on the State governments. They were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities inherited from our English ancestors and from time immemorial.

Barron *v.* Baltimore, 7 Pet. 247.
Robertson *v.* Baldwin, 165 U. S. 281.
See also—
Livingston *v.* Moore, 7 Pet. 551.
Fox *v.* Ohio, 5 How. 434.
Smith *v.* Maryland, 18 How. 76.
Withers *v.* Buckley, 20 How. 90.
Legal Tender Cases, 12 Wall. 535.
Justices *v.* Murray, 9 Wall. 278.
North Missouri R. Co. *v.* McGuire, 20 Wall. 46.
U. S. *v.* Cruikshank, 92 U. S. 552.
Spies *v.* Illinois, 123 U. S. 166.
McElvaine *v.* Brush, 142 U. S. 158.
Thorington *v.* Montgomery, 147 U. S. 492.
Brown *v.* New Jersey, 175 U. S. 174.

Two-thirds of Both Houses

The two-thirds vote in each House of Congress, which is required in proposing an amendment to the Constitution, is a vote of two-thirds of the Members present—assuming the presence of a quorum—and not a two-thirds vote of the entire membership, present and absent.

National Prohibition Cases, 253 U. S. 350.

Ratification of Amendments by Referendum

Referendum provisions of State constitution and statutes can not be applied in the ratification or rejection of amendments to the Federal Constitution without violating the requirement of this article that such ratification shall be by the legislatures of the several States, or by conventions therein, as Congress shall decide.

Hawke *v.* Smith, 253 U. S. 231.

Time Limit

This article implies that amendments be ratified within reasonable time after proposal.

Dillon *v.* Gloss, 256 U. S. 368, in which case it was held that the eighteenth amendment became effective on January 16, 1919, when its ratification in the State legislatures was consummated.

Approval of the President

To the contention that the eleventh amendment had not been proposed in the form prescribed by the Constitution, because Article I, section 7, requires the approval or disapproval of the President of "every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary," Justice Chase replied:

There can surely be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation. He has nothing to do with the proposition or adoption of amendments to the Constitution.

Hollingsworth *v.* Virginia, 3 Dall. 381.

Proceedings to Have Amendments Declared Void

Fairchild *v.* Hughes (258 U. S. 126) was a proceeding to have the nineteenth amendment declared void, which the court held could not be instituted by a private citizen in the Federal courts.

In Leser *v.* Garnett (258 U. S. 130) it was held that official notice from a State legislature to the Secretary of State, duly authenticated, of its adoption of a proposed amendment to the Federal Constitution, is conclusive upon him, and, when certified to by his proclamation, is conclusive upon the courts, although it was held in Dillon *v.* Gloss (256 U. S. 368) that the eighteenth amendment became a part of the Constitution on the date when ratification by the States was consummated, and not on the date when ratification was proclaimed by the Secretary of State.

See also—

U. S. v. Colby, 265 Fed. 998.

ARTICLE VI

MISCELLANEOUS PROVISIONS

ARTICLE VI.—MISCELLANEOUS PROVISIONS.

Clause 1.—DEBTS.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This clause was an express assumption of the debts incurred under the Articles of Confederation.

Terrett *v.* Taylor, 9 Cranch 50.

Clause 2.—SUPREME LAW.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Supremacy of the Constitution

The Constitution was formed mainly to secure union and harmony, and for this purpose it was necessary that in the sphere of action assigned to the National Government it should be supreme; it was intended to frame a paramount government, sovereign in its sphere, as distinguished from a league or compact. To this end it was necessary to make the Constitution the paramount law of the land. The Constitution is supreme over all the departments of the National Government and, to the extent of the powers delegated therein, over all who made themselves parties to it, States as well as persons. The Constitution, treaties, and general laws made by the General Government on the rights, duties, and subjects specially enumerated and confided to their jurisdiction are exclusive and supreme, as well by necessary implication as by express provision.

Martin *v.* Hunter, 1 Wheat. 363.
Legal Tender Cases, 12 Wall. 533.
Prigg *v.* Pennsylvania, 16 Pet. 628.
Dodge *v.* Woolsey, 18 How. 331.
See also—
Ableman *v.* Booth, 21 How. 517.
Kohl *v.* U. S., 91 U. S. 372.

In re Debs, 158 U. S. 578.
New Jersey *v.* Wilson, 7 Cranch 164.
Terrett *v.* Taylor, 9 Cranch 43.
Von Hoffman *v.* Quincy, 4 Wall. 535.
Taylor *v.* Taintor, 16 Wall. 366.
Farmers' etc., Bank *v.* Dearing, 91 U. S. 29.
Farrington *v.* Tennessee, 95 U. S. 685.
Pensacola Tel. Co. *v.* Western Union, 96 U. S. 1.
Pollard *v.* Kibbe, 14 Pet. 417.

In all branches of Government, both State and National, the powers are limited and defined; but the limitations and implied prohibitions in the Constitution must not be extended so far as to destroy the necessary powers of the State or prevent their efficient exercise, the general principles in the Constitution being merely declaratory and directory and not intended to fetter and control. The Constitution can not become weakened by a particular course of inaction under it.

Loan Assn. *v.* Topeka, 20 Wall. 663.
Railroad Co. *v.* Peniston, 18 Wall. 31.
Cooper *v.* Telfair, 4 Dall. 18.
Pollock *v.* Farmers' Loan, etc., Co., 158 U. S. 629.

This Constitution is the supreme law of the land, and no act of Congress is of any validity which does not rest on authority conferred by that instrument.[1]

U. S. *v.* Germaine, 99 U. S. 510.

Where a State law is assailed as repugnant to the Constitution, and on its face such act is seemingly within the power of the State to adopt, but its necessary effect and operation is to usurp a power granted by the Constitution to the United States, it must follow, from the paramount nature of the Constitution, that the act is void. In such a case the result of the test of necessary operation and effect is to demonstrate the want of power, because of the controlling nature of the limitations imposed on the States by the Constitution.

McCray *v.* U. S., 195 U. S. 60.
Northern Securities Co. *v.* U. S., 193 U. S. 344.
Ex parte Siebold, 100 U. S. 398.
Bank of Commerce *v.* New York, 2 Black 632.
Cohens *v.* Virginia, 6 Wheat. 381.
McCulloch *v.* Maryland, 4 Wheat. 405.
Gibbons *v.* Ogden, 9 Wheat. 210.

It must always be borne in mind that the Constitution, laws, and treaties of the United States are as much a part of the law of every State as its own local laws and constitution. This is a fundamental principle in our system of complex national polity.

Hauenstein *v.* Lynham, 100 U. S. 490.

[1] See also "Power of U. S. Courts to Declare Acts of Congress Unconstitutional," p. 409; "Constitutional Questions," p. 421; and "Acts of Congress Declared Unconstitutional," p. 759.

Cl. 2.—Supreme Law—Acts of Congress.

The mode or manner in which the police power may be exercised to safeguard the public health and the public safety is within the discretion of the State, subject, so far as the Federal power is concerned, only to the condition that no rules prescribed by a State, nor any regulation adopted by a local governmental agent acting under the sanction of State legislation, shall contravene the Constitution of the United States or infringe any right granted or secured by that instrument.

Jacobson *v.* Massachusetts, 197 U. S. 25.
Connolly *v.* Union Sewer Pipe Co., 184 U. S. 556.

Supremacy of Laws of the United States

In General

The laws of the United States are supreme within the meaning of this clause only when made in conformity with the Constitution, and an act of Congress repugnant to the Constitution is void. While the presumption is always in favor of the constitutionality of a legislative act, and the power to declare a statute void will never be exercised except in a very clear case, yet it is not only the right, but the duty, of the judiciary to pass upon the validity of statutes and to declare them void when their repugnancy to the Constitution is apparent.

Marbury *v.* Madison, 1 Cranch 176.
Ogden *v.* Saunders, 12 Wheat. 270.
Hylton *v.* U. S., 3 Dall. 175.
See also—
Ableman *v.* Booth, 21 How. 520.
Legal Tender Cases, 12 Wall. 531.
Brown *v.* Maryland, 12 Wheat. 436.
Butler *v.* Pennsylvania, 10 How. 415.
Von Hoffman *v.* Quincy, 4 Wall. 549.
U. S. *v.* Harris, 106 U. S. 635.
Hooper *v.* California, 155 U. S. 657.
Chesapeake, etc., Tel. Co. *v.* Manning, 186 U. S. 245.
Calder *v.* Bull, 3 Dall. 395.
Hepburn *v.* Griswold, 8 Wall. 610.
County of Livingston *v.* Darlington, 101 U. S. 410.
Fairbank *v.* U. S., 181 U. S. 285.
Mugler *v.* Kansas, 123 U. S. 661.
Scott v. Sandford, 19 How. 393.
Lochner *v.* New York, 198 U. S. 45.
Dartmouth College *v.* Woodward, 4 Wheat. 518.

In every case the act of Congress or the treaty is supreme, and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.

Gibbons *v.* Ogden, 9 Wheat. 210.

Territorial Laws

An act of Congress undertaking to legislate for the District of Columbia and the Territories of the United States would necessarily supersede a local Territorial law on the same subject.

El Paso, etc., R. Co. *v.* Gutierrez, 215 U. S. 87.

Cl. 2.—Supreme Law—Acts of Congress.

Supremacy of Acts of Congress Over State Laws

In general.—The United States is a Government with authority extending over the whole territory of the Union, acting upon the States and upon the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it.

Tennessee *v.* Davis, 100 U. S. 263.
White *v.* Hart, 13 Wall. 650.
Tarble's Case, 13 Wall. 406.
Waite *v.* Dowley, 94 U. S. 532.

All constitutional laws are binding on the people in the new States and the old ones, whether they consent to be bound by them or not. Every constitutional act of Congress is passed by the will of the people of the United States, expressed through their representatives, on the subject matter of the enactment, and when so passed it becomes the supreme law of the land and operates by its own force on the subject matter in whatever State or Territory it may happen to be. The proposition, therefore, that such a law can not operate upon the subject matter of its enactment without the express consent of the people of a new State where it may happen to be contains its own refutation.

Pollard *v.* Hagan, 3 How. 224.
See also—
Pensacola Tel. Co. *v.* Western Union, 96 U. S. 9.
Hepburn *v.* Griswold, 8 Wall. 611.
Ableman *v.* Booth, 21 How. 519.

Repugnancy must be direct and positive.—A State statute although enacted in pursuance of a power not surrendered to the General Government, must in the execution of its provisions yield, in case of conflict, to a statute constitutionally enacted under authority conferred upon Congress; but it is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnancy or conflict is so direct and positive that the two acts can not be reconciled or stand together.

Missouri, etc., R. Co. *v.* Haber, 169 U. S. 623.
Sinnot *v.* Davenport, 22 How. 242.

Immunity from prosecution for testifying.—The immunity given by an act of Congress which provides that "no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify" is clearly intended to be general and to be applicable whenever and in whatever court such prosecution may be had, whether State or Federal.

Brown *v.* Walker, 161 U. S. 608.

Cl. 2.—Supreme Law—Acts of Congress.

Quarantine regulations.—State statute which, as interpreted by the supreme court of the State, empowers the State board of health to exclude healthy persons from a locality infested with a contagious and infectious disease, such power applying as well to persons seeking to enter the infected place, whether they come from without or within the State, does not conflict with acts of Congress relating to foreign immigration into the United States, and conferring quarantine powers upon the Marine Hospital Service.

Compagnie Francaise, etc., *v.* Louisiana, 186 U. S. 385.

Later Statute or Treaty Supersedes Prior Treaty or Statute

In general.—By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either; but if the two are inconsistent, the one last in date will control the other, provided always the stipulation of the treaty on the subject is self-executing.

Whitney *v.* Robertson, 124 U. S. 194.
Rainey *v.* U. S. 232 U. S. 310.
U. S. *v.* Lee Yen Tai, 185 U. S. 220.
Horner *v.* U. S., 143 U. S. 570.

The Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature whether it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political not the judicial department, and the legislature must execute the contract before it can become a rule for the court.

Foster *v.* Neilson, 2 Pet. 314.
Chinese Exclusion Case, 130 U. S. 600.
Chew Heong *v.* U. S., 112 U. S. 540.
Cherokee Tobacco, 11 Wall. 621.
Sanchez *v.* U. S. 216 U. S. 167.

When treaty rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute.

Head Money Cases, 112 U. S. 599.
The *Peggy*, 1 Cranch 103.

The provisions of an act of Congress, passed in the exercise of its constitutional authority, if clear and explicit, must be upheld by the courts even in contravention of express stipulations in an earlier treaty.

Fong Yue Ting *v.* U. S., 149 U. S. 720.
Lem Moon Sing *v.* U. S., 158 U. S. 549.

Repeals by implication are never favored, and a later treaty will not be regarded as repealing an earlier statute by implication unless the two are absolutely incompatible and the statute can not be enforced without antagonizing the treaty.

Johnson *v.* Browne, 205 U. S. 321.

The laws of Congress are always to be construed so as to conform to the provisions of a treaty if it be possible to do so without violence to their language. This rule operates with special force where a conflict would lead to the abrogation of a stipulation in a treaty making a valuable cession to the United States.

U. S. *v.* Whiskey, 108 U. S. 496.

Violation of treaty by statute a matter of international concern.—If a treaty is violated by a general statute, it is a matter of international concern, which must be determined by treaty or by such other means as to enable one State to enforce upon another the obligations of a treaty. A court has no power to set itself up as the instrumentality for enforcing the provisions of a treaty with a foreign nation which the Government of the United States as a sovereign power chooses to disregard.

Botiller *v.* Deminguez, 130 U. S. 247.

Exemption of coastwise steamers from pilotage.—Neither the exemption of coastwise steam vessels from pilotage, resulting from the law of the United States, nor any lawful exemption of coastwise vessels created by the State law concerns vessels in the foreign trade, and therefore any such exemptions do not operate to produce a discrimination against British vessels engaged in foreign trade and in favor of vessels of the United States in such trade.

Olsen *v.* Smith, 195 U. S. 344.

Criminal statute applying to Indian country.—A criminal statute applying to Indian country supersedes a prior treaty with the tribe in conflict therewith.

Cherokee Tobacco, 11 Wall. 621.

Treaties Binding on the States

The treaty-making power has been surrendered by the States and given to the United States, and treaties are as binding within the territorial limits of the States as they are elsewhere throughout the domain of the United States.

Baldwin *v.* Franks, 120 U. S. 682.
Maiorano v. Baltimore, etc., R. Co., 213 U. S. 268.[1]

In Ware *v.* Hylton (3 Dall. 242) it was said by Chase, J., that "a treaty can totally annihilate any part of the constitution of any of the individual States that is contrary to the treaty."

[1] See also Art. II, sec. 2, cl. 2, under heading "To abolish disabilities of aliens," p. 393.

Cl. 2.—Supreme Law—Treaties.

Supremacy of Treaties as Law

In General

A treaty is a solemn agreement between nations. The words "treaty" and "nation," however, are words of our own language, and have been applied to Indian tribes, thus treating such tribes as distinct political communities. It binds the nation in the aggregate and all its subordinate authorities and judges, State as well as Federal.

Foster *v.* Neilson, 2 Pet. 314.
Worcester *v.* Georgia, 6 Pet. 559.
Ware *v.* Hylton, 3 Dall. 199.
See also—
Tucker *v.* Alexandroff, 183 U. S. 424.
U. S. *v.* Whiskey, 93 U. S. 196.
Talton *v.* Mayes, 163 U. S. 383.
Roff *v.* Burney, 168 U. S. 21.
Marbury *v.* Madison, 1 Cranch 176.
Owings *v.* Norwood, 5 Cranch 348.
Satterlee *v.* Matthewson, 2 Pet. 413.
Botiller *v.* Dominguez, 130 U. S. 247.
Collins *v.* Loisel, 262 U. S. 426.

When duly ratified a treaty becomes, under this clause, the supreme law of the land. A treaty is in the nature of a contract, but in the United States it is something more; it is like an act of Congress, of which the courts must take judicial notice, and it constitutes a rule of decision in all courts. The courts are empowered to administer a treaty according to its terms, but they can not annul or disregard any of those terms. When the terms of a stipulation import a contract, a treaty addresses itself to the political and not to the judicial department, and Congress must execute it before it becomes a rule of court. After a treaty is executed and ratified, the courts can not go behind it for the purpose of annulling its operation. The courts, both Federal and State, are bound to hold a State constitution or law contrary to a treaty null and void.

Fairfax *v.* Hunter, 7 Cranch 627.
U. S. *v.* Rauscher, 119 U. S. 418.
Strother *v.* Lucas, 12 Pet. 439.
Doe *v.* Braden, 16 How. 657.
Fellows *v.* Blacksmith, 19 How. 372.
See also—
American Ins. Co. *v.* Canter, 1 Pet. 543.
Pollard *v.* Kibbe, 14 Pet. 412.
Chew-Heong *v.* U. S., 112 U. S. 540.
In re Cooper, 143 U. S. 502.
U. S. *v.* Ferreira, 13 How. 40.
Holden *v.* Joy, 17 Wall. 242.
U. S. *v.* New York Indians, 173 U. S. 469.
Society for Propagation of Gospel *v.* New Haven, 8 Wheat. 492.

A treaty is to be regarded as equivalent to an act of Congress whenever it operates of itself, without the aid of any legislative provisions; and where a treaty and an act of Congress are in conflict the latest in date must prevail. This clause was not intended to operate to give treaties precedence over acts

of Congress, or *vice versa*; a treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty; and any law contained in a treaty may be repealed by Congress when it relates to subjects under the legislative power. Whether an act of Congress shall prevail over a treaty is purely a question of municipal law as distinguished from public law.

Foster *v.* Neilson, 2 Pet. 314.
The Cherokee Tobacco, 11 Wall. 621.
The *Amelia*, 1 Cranch 1.
Taylor *v.* Morton, 2 Curt. 454.
See also—
U. S. *v.* Arredondo, 6 Pet. 691.
U. S. *v.* Percheman, 7 Pet. 51.
Horner *v.* U. S., 143 U. S. 578.
Stephens *v.* Cherokee Nation, 174 U. S. 483.
U. S. *v.* Lee Yen Tai, 185 U. S. 220.
Webster *v.* Reid, 11 How. 437.

Relation and Conflict Between Treaties and Acts of Congress

It can not be set up against the validity of an act of Congress that it conflicts with an existing treaty with a foreign nation.

Head Money Cases, 112 U. S. 580.
Whitney *v.* Robertson, 124 U. S. 190.
Kelly *v.* Hedden, 124 U. S. 196.
Thomas *v.* Gay, 169 U. S. 264, reversing judgment Gay *v.* Thomas, 46 Pac. 578.
Lone Wolf *v.* Hitchcock, 187 U. S. 553.
Hijo *v.* U. S., 194 U. S. 315.

A citizen can not set up the breach of a treaty to avoid an obligation arising under it. The power to declare it void rests with the Government.

Ware *v.* Hylton, 3 Dall. 236.

Property Rights Under Treaties

Under this clause the terms of a treaty were held to control State laws as to the property rights of an alien.

Hauenstein *v.* Lynham, 100 U. S. 483.

On February 28, 1877, by treaty with the Sioux Indians, the Black Hills Reservation in Dakota was ceded to the United States; and where a party was in possession of a mining claim on that day, under the mining laws and customs he could, by adopting what had been done, date his rights from that day, and such location and improvements would give him the right of possession.

Noonan *v.* Caledonia, etc., Co., 121 U. S. 393.

Where a treaty provides in respect to Indian reservations that with certain exceptions no persons shall be permitted to "pass over, settle upon, or reside in the territory described," the location of a mining claim therein and a relocation two years after the opening of the reservation can not be made the basis of a mineral patent as against one who located the same claim four

months after the opening of the reservation and otherwise complied with the law.

Kendall *v.* San Juan Silver Min. Co., 144 U. S. 658, distinguishing Noonan *v.* Caledonia, etc., Co., *supra.*

Self-Executing Provisions in Treaties

A stipulation in a treaty with an Indian tribe that laws forbidding the introduction of liquors in Indian country should apply to ceded territory, held operative without legislation and binding in the courts, though the ceded territory was within an organized county of the State.

U. S. *v.* Whiskey, 93 U. S. 196.

Where a treaty contains stipulations which are self-executing, the provisions have the force and effect of a legislative enactment.

Whitney *v.* Robertson, 124 U. S. 190.
Kelly *v.* Hedden, 124 U. S. 196.

State Laws

In General

The law of a State, although enacted in the exercise of a power not controverted, if it interferes with any valid law of Congress must yield to the latter.

Gibbons *v.* Ogden, 9 Wheat. 204.
New York *v.* Miln, 11 Pet. 137.
Passenger Cases, 7 How. 533.
Foster *v.* New Orleans, 94 U. S. 247.
Walling *v.* Michigan, 116 U. S. 455.

In Conflict with Federal Law

Neither the constitution of a State nor any act of its legislature, however formal or solemn, whatever right it may confer on Indians or withhold from them, can withdraw them from the influence of an act of Congress which that body has the constitutional right to pass concerning them.

U. S. *v.* Holliday, 3 Wall. 407.
Bunch *v.* Cole, 263 U. S. 250.

Laws passed by Texas before its admission into the Union, repudiating obligations then existing, can not be in conflict with the Federal Constitution.

Herman *v.* Phalen, 14 How. 79.
League *v.* De Young, 11 How. 185.
Calkin *v.* Cocke, 14 How. 227.

A New York statute, making it unlawful for any persons other than Indians to settle or reside on any lands belonging to or occupied by any nation or tribe of Indians within the State and providing for their summary ejectment, held not to conflict with the Federal Constitution or any treaty or act of Congress.

New York *v.* Dibble, 21 How. 368.

By virtue of its power to make war and suppress insurrection, the Government has the right to transport troops to all parts of

the Union by the usual and most expeditious mode, and a State tax on passengers carried out of the State is void as an interference therewith.

Crandall *v.* Nevada, 6 Wall. 44.

State statute which makes it incumbent on an insurance company organized under the laws of another State and desiring to do business in the State enacting the statute to agree not to remove any suit begun against it in a court of the State to a Federal court is unconstitutional and such an agreement is void.

Home Ins. Co. *v.* Morse, 20 Wall. 445.

State Control of Government Property

Money in the hands of a disbursing officer is as much the money of the United States as if it had not been drawn from the Treasury and is not liable to attachment by the creditors of the parties to whom it is payable.

Buchanan *v.* Alexander, 4 How. 20.
Averill *v.* Tucker, 2 Cranch (C. C.) 544.

The mere fact that a railroad corporation was organized under the laws of Congress does not exempt it from State control in respect to rates for local freight. Congress can wholly remove such a corporation from State control, but in the absence of something in the statutes indicating an intention on the part of Congress to so remove it the State has the power to prescribe the rates for all local business carried by it.

Reagan *v.* Mercantile Trust Co., 154 U. S. 413.

State Taxation[1]

Of Government property.—Lands within a State which, pursuant to acts of Congress for laying and collecting all direct taxes, are sold, struck off, and purchased by the United States for the amount of taxes thereon, and are afterwards sold by the United States for a larger sum, or redeemed by the former owner, are not liable to be taxed, under authority of the State, while so owned by the United States.

Van Brocklin *v.* Tennessee, 117 U. S. 153.

Of Federal agencies[2]—*In general.*—The power of State taxation does not extend to the instruments of the Federal Government nor to the constitutional means employed by Congress to carry into execution the powers conferred in the Federal Constitution.

Ward *v.* Maryland, 12 Wall. 426.
Savings Soc. *v.* Coite, 6 Wall. 605.

Operation of mines belonging to Indians.—A State license tax can not be imposed by a State on the business of mining carried on in connection with mines owned by Indians in segregated and unallotted lands.

Choctaw, etc., R. Co. *v.* Harrison, 235 U. S. 292.
Indian Territory, etc., Oil Co. *v.* Oklahoma, 240 U. S. 522.

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[1] See same subject, pp. 180, 315, 362, 366, 600, 637, 707, and 728.
[2] See also "Taxation of Government Agencies," pp. 79, 532, and 635.

Cl. 2.—Supreme Law—State Tax Laws.

Federal officer's salary.—The compensation of an officer of the United States is fixed by a law made by Congress, and any law of a State imposing a tax upon the office diminishing it is in conflict with the law of the United States which secures the allowance to the officer.

Dobbins *v.* Erie County, 16 Pet. 435.

Telegraph messages sent by Federal officers.—A specific tax imposed by the State on each message sent by public officers on the business of the United States is a tax upon a governmental agency and therefore void.

Telegraph Co. *v.* Texas, 105 U. S. 464.

Property of corporation organized under act of Congress.—A State tax on the property of a railroad company organized under an act of Congress was held not to be invalid. The tax was not imposed upon the franchises nor was it laid upon any act which the company had been authorized to do, but it was exclusively upon the real and personal property of the agent, taxed in common with all other property in the State of a similar character.

Railroad Co. *v.* Peniston, 18 Wall. 31.

State corporation performing services for National Government.—Congress may, in the exercise of powers incidental to the express powers conferred, make or authorize contracts with individuals or corporations for services to the Government; may grant aids by money or land in preparation for such services; may make any stipulation and conditions in relation to such aids not contrary to the Constitution; and may exempt, in its discretion, the agencies employed in such services from any State taxation which will really prevent or impede their performance

Thomson *v.* Union Pac. R. Co., 9 Wall. 588.
Santa Clara County *v.* Southern Pac. Co., 18 Fed. 389; 118 U. S. 394.
Baltimore Ship, etc., Co. *v.* Baltimore, 195 U. S. 375.

Bank of the United States.—State statute imposing a tax on the operation of a branch of the Bank of the United States held unconstitutional.

McCulloch *v.* Maryland, 4 Wheat. 436.

Surety upon bonds required by United States.—State statute imposing a tax upon the premiums received by a foreign surety company upon bonds required by the United States is not invalid as requiring the payment of a tax by a Federal agency.

Fidelity, etc., Co. v. Pennsylvania, 240 U. S. 319.

Bonds of Territorial municipalities.—Bonds issued by a municipality in a Territory are not subject to State taxation, and the subsequent admission of the Territory as a State does not bring them within the taxing power of another State.

Farmers' Bank *v.* Minnesota, 232 U. S. 516.

Of United States obligations.—A State can not, in the exercise of the power of taxation, tax obligations of the United States.

Weston *v.* Charleston, 2 Pet. 449.
Bank of Commerce *v.* New York, 2 Black 620.
Home Ins. Co. *v.* New York, 134 U. S. 594.
Hamilton Company *v.* Massachusetts, 6 Wall. 639.
Home Sav. Bank *v.* Des Moines, 205 U. S. 503.
Bank *v.* Supervisors, 7 Wall. 30.

Checks issued by the Treasurer of the United States for interest accrued upon certain registered bonds of the United States are liable to State taxation.

Hibernia Sav., etc., Soc. *v.* San Francisco, 200 U. S. 310.

State statute requiring savings banks to pay a tax on deposits is a tax on the franchises and not a tax on property, and the fact that deposits were invested and held in securities of the United States declared by Congress to be exempt from taxation does not exempt such deposits from the tax imposed by the State.

Savings Soc. *v.* Coite, 6 Wall. 602.
Provident Inst. *v.* Massachusetts, 6 Wall. 612.

Under the inheritance tax laws of a State a tax may be validly imposed on a legacy consisting of United States bonds issued under a statute declaring them to be exempt from State taxation in any form.

Plummer *v.* Coler, 178 U. S. 117.

There is nothing in the exemption of Government bonds from taxation which prevents them from being seized for taxes due upon unexempt property.

Scottish Union *v.* Bowland, 196 U. S. 632.

National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a State to define their duties, or control the conduct of their affairs, is absolutely void, wherever such attempted exercise of authority expressly conflicts with laws of the United States.

Davis *v.* Elmira Sav. Bank, 161 U. S. 283.
Easton *v.* Iowa, 188 U. S. 238.

A different system, as between national and State banks, of taxing interest-bearing deposits, may be maintained by a State so long as there is no substantial discrimination.

Clement Nat. Bank *v.* Vermont, 231 U. S. 120.

An act of Congress authorizing the taxation of a national bank by a State is valid.

Van Allen *v.* Assessors, 3 Wall. 573.

National banks are subject to the laws of the State and are governed in their daily course of business far more by the laws

of the State than of the Nation. All their contracts are governed and construed by State laws. Their acquisitions and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on State law. It is only when the State law incapacitates the banks from discharging their duties to the Government that it becomes unconstitutional.

National Bank *v.* Commonwealth, 9 Wall. 362.
McClellan *v.* Chipman, 164 U. S. 357.

National banks organized under the acts of Congress are subject to State legislation except where such legislation is in conflict with some act of Congress, or where it tends to impair or destroy the utility of such banks as agents or instrumentalities of the United States, or interferes with the purposes of their creation.

Waite *v.* Dowley, 94 U. S. 533.
Farmers' Bank *v.* Dearing, 91 U. S. 33.

State Interference with Federal Officers or Institutions

Where oleomargarine was furnished by the Federal Government to be served as food to the inmates of a national home for Federal soldiers, the governor of such institution is not amenable to the laws of the State in which it is located, regulating the use and sale thereof, since the State has no constitutional power to interfere with the internal management of Federal institutions located within its limits.

Ohio *v.* Thomas, 173 U. S. 276.

Conditions Arising from Attempted Secession

Ordinance of Secession Void

And of itself alone affected neither the jurisdiction of the Supreme Court of the State nor its relation to the appellate power of the United States Supreme Court.

White *v.* Cannon, 6 Wall. 450.
Keith *v.* Clark, 97 U. S. 461.
Ford *v.* Surget, 97 U. S. 605.

Acts of Confederate Congress

The Confederate Government could make no law. Its prescriptions imposed no obligations, political or moral, and the only justification for obedience which the citizen could make to his rightful sovereign was deadly coercion by violence or threats.

U. S. *v.* Cotton, 27 Fed. Cas. No. 15958.
Dewing *v.* Perdicaries, 96 U. S. 195.

An act of the Confederate congress establishing a court known as the "District court of the Confederate States of America for the northern district of Alabama" was void. The court was a nullity, and could exercise no rightful jurisdiction. The forms of law with which it clothed its proceedings gave no protection

to those who, assuming to be its officers, were the instruments by which it acted.

Hickman *v.* Jones, 9 Wall. 201.

Act of the Confederate congress appropriating balances in the hands of postmasters for the payment of claims against the United States for Postal Service could have no legal effect in making a payment to a mail carrier valid, when such payments could only be made upon the production of proper orders and receipts from the United States Post Office Department.

U. S. *v.* Keehler, 9 Wall. 86.

Acts of State Governments During Insurrection

Laws made to promote and aid the Rebellion can never be recognized by, nor receive the sanction of, the courts of the United States as valid and binding laws.

Thomas *v.* Richmond, 12 Wall. 357.
Taylor *v.* Thomas, 22 Wall. 490.
Huntington *v.* Texas, 16 Wall. 411.
Daniels *v.* Tearney, 102 U. S. 419.

The acts of the several States in their individual capacities, and of their different departments of government, during the war, so far as they did not impair or tend to impair the supremacy of the national authority, or the just rights of citizens under the Constitution, are in general to be treated as valid and binding.

Horn *v.* Lockhart, 17 Wall. 580.
U. S. *v.* Home Ins. Co., 22 Wall. 103.
Sprott *v.* U. S., 20 Wall. 459.

A contract made in aid of the Rebellion is void and can not be enforced in the courts.

Texas *v.* White, 7 Wall. 700.
Hanauer *v.* Doane, 12 Wall. 342.

A contract for the payment of Confederate notes made during the Rebellion, between parties residing within the so-called Confederate States, could be enforced in the courts of the United States.

Thorington *v.* Smith, 8 Wall. 6.

Clause 3.—OATH OF OFFICE.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test

Cl. 3.—Oath of Office.

shall ever be required as a Qualification to any Office or public Trust under the United States.

This is the last and closing clause of the Constitution, and inserted when the whole frame of government, with the powers hereinbefore specified, had been adopted by the convention; and it was in that form, and with these powers, that the Constitution was submitted to the people of the several States for their consideration and decision.

Ableman *v.* Booth, 21 How. 524.

The oath which might be exacted—that of fidelity to the Constitution—is prescribed, and no other can be required. Yet the legislature may superadd to the oath directed by the Constitution such other oath of office as its wisdom may suggest.

McCulloch *v.* Maryland, 4 Wheat. 416.

Congress may not prescribe a test oath as a qualification for holding office, such an act being in effect an *ex post facto* law, and this is equally true of the State governments.

Ex parte Garland, 4 Wall. 377.
Cummings *v.* Missouri, 4 Wall. 323.

ARTICLE VII

RATIFICATION

ARTICLE VII.—RATIFICATION.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States ratifying the Same.

Date of Ratification by the Several States

On March 4, 1789, the day which had been fixed for commencing the operations of government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows:

Delaware, December 7, 1787.
Pennsylvania, December 12, 1787.
New Jersey, December 18, 1787.
Georgia, January 2, 1788.
Connecticut, January 9, 1788.
Massachusetts, February 6, 1788.
Maryland, April 28, 1788.
South Carolina, May 23, 1788.
New Hampshire, June 21, 1788.
Virginia, June 26, 1788.
New York, July 26, 1788.

North Carolina: The President informed Congress on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789.

Rhode Island: The President informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1790.

Vermont, in convention, ratified the Constitution January 10, 1789, and was, by an act of Congress approved February 19, 1791, "received and admitted into this Union as a new and entire member of the United States."

Effective Date

The Constitution went into effect March 4, 1789.

Owings *v.* Speed, 5 Wheat. 423.

AMENDMENTS 1 TO 10

RESTRICTIONS ON FEDERAL POWER

AMENDMENTS 1 TO 10.—RESTRICTIONS ON FEDERAL POWER.

Amendment 1.[1]—RELIGION, FREE SPEECH, ETC.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Leading Cases

Watson *v.* Jones (13 Wall. 728):

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all.

Permoli *v.* First Municipality (3 How. 609):

The Constitution makes no provision for protecting the citizens of the respective States in their religious liberties; this is left to the State constitutions and laws; nor is there any inhibition imposed by the Constitution of the United States in this respect on the States.

Davis *v.* Beason (133 U. S. 341):

Bigamy and polygamy are crimes by the laws of all civilized and Christian countries. They are crimes by the laws of the United States. * * * To call their advocacy a tenet of religion is to offend the common sense of mankind. If they are crimes, then to teach, advise, and counsel their practice is to aid in their commission, and such teaching and counseling are themselves criminal and proper subjects of punishment.

Mormon Church *v.* U. S. (136 U. S. 49):

The State has a perfect right to prohibit polygamy and all other open offenses against the enlightened sentiment of mankind, notwithstanding the pretense of religious conviction by which they may be advocated and practiced.

Reynolds *v.* U. S. (98 U. S. 145):

Held, that the lower court did not err in charging the jury that if defendant, under the influence of a religious belief that it was right, deliberately married a second time having a first wife living, the want of consciousness of evil intent did not excuse him, but that criminal intent would be implied.

Ex parte Jackson (96 U. S. 736), holding:

In excluding various articles from the mail, the object of Congress has not been to interfere with the freedom of the press, or with any other

[1] See p. 25 for ratification.

rights of the people, but to refuse its facilities for the distribution of matter deemed injurious to the public morals.

In Turner *v.* Williams (194 U. S. 279) it was claimed that an act to regulate the immigration of aliens into the United States, which prohibited the entry into this country of persons generally known as anarchists, was an abridgment of their rights under this amendment, but it was held otherwise.

U. S. *v.* Cruikshank (92 U. S. 542):

This amendment was not intended to limit the powers of State governments in respect to their own citizens, but to operate upon the National Government alone. The right [to assemble and to petition] was not created by the amendment; neither was its continuance guaranteed, except as against congressional interference. For their protection in this enjoyment, * * * the people must look to the States. The power for that purpose was originally placed there and has never been surrendered to the United States.

In General

The first ten amendments were submitted to the several States by a joint resolution of Congress, adopted September 25, 1789, under a preamble reciting:

The conventions of a number of States having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added. And as extending the ground of public confidence in the Government will best insure the beneficent ends of its institution. (1 U. S. Stat. L. 97.)

There were twelve articles proposed, the first two of which failed of adoption. The two rejected read as follows:

ARTICLE I. After the first enumeration required by the first article of the Constitution there shall be one Representative for every thirty thousand until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress that there shall be not less than one hundred Representatives nor less than one Representative for every forty thousand persons until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress that there shall not be less than two hundred Representatives nor more than one Representative for every fifty thousand persons.

ART. II. No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened.

Nature, Purpose, and Construction of Amendments

The first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government but simply to embody certain guaranties and immunities which we had inherited from our English ancestors and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the

exceptions, which continued to be recognized as if they had been formally expressed.

Robertson *v.* Baldwin, 165 U. S. 281.

The object of the first eight amendments to the Constitution was to incorporate into it certain principles of natural justice which had become permanently fixed in the jurisprudence of the mother country, and therefore the construction given to those principles by the English courts is cogent evidence of what they were designed to secure and of the limitations that should be put upon them.

Brown *v.* Walker, 161 U. S. 591.

Religion

Not a Limitation on the States

The Constitution makes no provision for protecting the citizens of the respective States in their religious liberties; that is left to the State constitutions and laws. Nor is there any inhibition imposed by the United States Constitution in this respect on the States.

Permoli *v.* First Municipality, 3 How. 609.

See also—

Ohio *v.* Dollison, 194 U. S. 447.
Bolln *v.* Nebraska, 176 U. S. 87.
Brown *v.* New Jersey, 175 U. S. 174.
Brown *v.* Walker, 161 U. S. 606.
Monongahela Nav. Co. *v.* U. S., 148 U. S. 324.
McElvaine *v.* Brush, 142 U. S. 158.
Eilenbecker *v.* Plymouth County, 134 U. S. 34.
Spies *v.* Illinois, 123 U. S. 131.
Edwards *v.* Elliott, 21 Wall. 552.
Fox *v.* Ohio, 5 How. 410.
Barron *v.* Baltimore, 7 Pet. 247.
Livingston *v.* Moore, 7 Pet. 551.

Incorporation and Appropriation for Hospital or Religious Society

Act of Congress chartering a corporation for the purpose of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of the corporation, and an appropriation by Congress for the purpose of aiding such hospital does not conflict with this provision from the mere fact that the members of the corporation are members of a monastic order or sisterhood of the church.

Bradfield *v.* Roberts, 175 U. S. 295.

Treaty Money of Indians for Support of Catholic Schools

Money appropriated by Congress under the obligations of treaties with the Indians are treaty and trust moneys which the Indians can lay claim to as a matter of right, and a contract between the Commissioner of Indian Affairs and the Bureau of Catholic Indian Missions for the payment of such money for

the support of Indian Catholic schools, made at the request of the Indians, does not violate the Constitution.

Quick Bear *v.* Leupp, 210 U. S. 50.

Polygamy

Polygamy is not under the protection of the constitutional guaranty of religious freedom.

Mormon Church *v.* U. S., 136 U. S. 49.
Reynolds *v.* U. S., 98 U. S. 163.

A Territorial statute which prohibits polygamists from voting is not in violation of this amendment.

Davis *v.* Beason, 133 U. S. 342.

Exemption of Ministers from Draft

Act May 18, 1917, exempting ministers of religion and theological students from the draft, and exempting members of sects whose tenets exclude the moral right to engage in war from strict military service, held not violative of this amendment.

Selective Draft Law Cases, 245 U. S. 366.

Belief in Supernatural Powers

Notwithstanding constitutional provision as to religious freedom, held, that it was an offense to pretend to believe in supernatural powers for the purpose of procuring money and to use the mails in pursuance of such purpose.

New *v.* U. S., 245 Fed. 710.

Freedom of Press

In General

As a condition for the privilege of entry of publications as second-class matter, Congress may require the furnishing of certain information with respect to the ownership and circulation of the publications.

Lewis Pub. Co. *v.* Morgan, 229 U. S. 288.

The freedom of speech and of the press does not permit the publication of libels, blasphemous or other indecent articles, or other publications injurious to morals or private reputation.

Robertson *v.* Baldwin, 165 U. S. 281.

Act of Congress making it an offense to mail an obscene paper does not contravene this amendment.

Harman *v.* U. S., 50 Fed. 921.
U. S. *v.* Journal Co., 197 Fed. 415.

The constitutional freedom of the press will not protect the publisher of newspaper articles concerning a pending case, though of public interest, from contempt proceedings, under Judicial Code, section 268, where the articles tend to obstruct the administration of justice.

Toledo Newspaper Co. *v.* U. S., 247 U. S. 402.

A statute under which an indictment is framed, charging the offense of mailing a newspaper containing an advertisement of

a State lottery, is not obnoxious to this provision which forbids Congress passing any law abridging the freedom of the press; the circulation of newspapers is not prohibited, but the Government declines itself to become an agent in the circulation of printed matter which it regards as injurious to the people.

In re Rapier, 143 U. S. 134.
Horner *v.* U. S., 143 U. S. 213.
Same *v.* Same, 143 U. S. 570.

Motion-Picture Censorship

Act of April 16, 1913 (103 Ohio Laws, p. 399), creating a board of censors of motion-picture films, held constitutional.

Mutual Film Corp. *v.* Ohio, 236 U. S. 230.
Mutual Film Corp. *v.* Kansas, 236 U. S. 248.

Free Speech

The first amendment, while prohibiting legislation against free speech as such, can not have been, and obviously was not, intended to give immunity for every possible use of language.

Frohwerk *v.* U. S., 249 U. S. 204.

The espionage act of June 15, 1917, does not fall within the language of this amendment.

Schenck *v.* U. S., 249 U. S. 47.
Debs *v.* U. S., 249 U. S. 211.
Abrams *v.* U. S., 250 U. S. 616.

Grievances

This amendment, like the others proposed and adopted at the same time, was not intended to limit the powers of the State governments in respect to their own citizens, but to operate upon the National Government alone. They left the authority of the States just where they found it and added nothing to the already existing powers of the United States.

U. S. *v.* Cruikshank, 92 U. S. 552.
Turner *v.* Williams, 194 U. S. 292.

Amendment 2.[1]—BEARING ARMS.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The right of the people to keep and bear arms is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that this right shall not be infringed, but this means no more than that it shall not be infringed by Congress. This amendment is one of those that has no other effect

[1] See p. 25 for ratification.

than to restrict the powers of the National Government and not those of the States.

U. S. *v.* Cruikshank, 92 U. S. 553.
See also—
Presser *v.* Illinois, 116 U. S. 265.
Miller *v.* Texas, 153 U. S. 535.

In Robertson *v.* Baldwin (165 U. S. 275) it was held that an act which prohibits the carrying of concealed weapons does not violate this amendment.

Amendment 3.[1]—QUARTERING SOLDIERS.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment 4.[1]—SEARCHES AND SEIZURES.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Leading Cases

In Boyd *v.* U. S. (116 U. S. 616) it was held that a compulsory production of private papers to be used in evidence against the owner is an unreasonable search and seizure within this amendment, and that an act of Congress which requires a party to produce his private books and papers, and if he refuses to do so upon demand, permits the Government to assume as true its allegations as to the contents of said books and papers, is unconstitutional.

In Ex parte Jackson (96 U. S. 733) it was held that—

> No law of Congress can place in the hands of officials connected with the Postal Service any authority to invade the secrecy of letters and such sealed packages in the mail; and all regulations adopted as to mail matter of this kind must be in subordination to the great principle embodied in the fourth amendment.

In Interstate Com. Com. *v.* Baird (194 U. S. 25) the court held (at p. 44):

> The inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation, and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow rules which prevail in trials at common law where a strict correspondence is required between allegation and proof.

[1] See p. 25 for ratification.

Amend. 4.—Searches and Seizures.

Not a Limitation on the States [1]

This amendment has no application to State process.

Smith *v.* Maryland, 18 How. 71.

Affirmation of Common-Law Principles

This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws. The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution, should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights.

Weeks *v.* U. S., 232 U. S. 392.

Applicable to Criminal Cases Only

A distress warrant issued by the Solicitor of the Treasury under an act of Congress is not forbidden by this article because issued without the support of an oath or affirmation. This article has no reference to civil proceedings for the recovery of debts of which a search warrant is not made part. The process in this case is termed in the act of Congress a warrant of distress. The name bestowed upon it can not affect its constitutional validity.

Murray *v.* Hoboken Land, etc., Co., 18 How. 274.

Mere interrogation under oath by a government official of one lawfully in confinement is not a search and seizure.

Bilokumsky *v.* Tod, 260 U. S. 149.

There is an intimate relation between the fourth and fifth amendments. In Boyd *v.* U. S. (116 U. S. 633) the court said:

> They throw great light on each other. For the "unreasonable searches and seizures" condemned in the fourth amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the fifth amendment; and compelling a man "in a criminal case to be a witness against himself," which is condemned in the fifth amendment, throws light on the question as to what is an "unreasonable search and seizure" within the meaning of the fourth amendment. And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself.

Unreasonableness

Reasonableness a Judicial Question

The question whether a seizure or a search is unreasonable in the language of the Constitution is a judicial and not a legislative question; but in determining whether a seizure is or is not unreasonable all of the circumstances under which it is made must be looked to.

Mason *v.* Rollins, 2. Biss. (U. S.) 99.
Gouled *v.* U. S., 255 U. S. 298.

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[1] See also same subject, under Amend. 1, p. 567.

Amend. 4.—Searches and Seizures.

"Search and seizure" laws enacted to aid in the suppression of the unlawful traffic in liquors have been sustained in many States as not being violative of the fourth amendment.

State *v.* Nejin, 74 So. 103; but see Amos *v.* U. S. 255 U. S. 313, where it was held that a search and seizure was unlawful without proper warrant.

Necessity for Warrant

A seizure of books and papers found in a person's office immediately after his arrest, without authority of law and without warrant, is an unreasonable search and seizure.

U. S. *v.* Mounday, 208 Fed. 186.

An information signed by the district attorney, but without any affidavit as required by the Constitution, is insufficient to authorize an arrest.

U. S. *v.* Wells, 225 Fed. 320.

Opening Letters and Papers in Mail

The use in evidence in a criminal case of letters voluntarily written by the accused after the crime, while he was in prison, and which came into the possession of the prison officials under established practice reasonably demanded to promote discipline, did not infringe the constitutional safeguards against self-incrimination or unreasonable searches and seizures.

Stroud *v.* U. S., 251 U. S. 15.

Compulsory Production of Books and Papers

Suits for penalties and forfeitures incurred by the commission of offenses against the law are of a *quasi* criminal nature, and a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself and is the equivalent of an unreasonable search and seizure.

Boyd *v.* U. S., 116 U. S. 634.
Perlman *v.* U. S., 247 U. S. 7.

The admission in evidence of papers taken from the person of a defendant in a criminal case is not a violation of the fourth amendment prohibiting unreasonable searches and seizures.

State *v.* Sharpless, 111 S. W. 69.

There is no unreasonable search and seizure when a writ, suitably specific and properly limited in its scope, calls for the production of documents which, as against their lawful owner to whom the writ is directed, the party procuring its issuance is entitled to have produced.

It was so held in Wilson *v.* U. S. (221 U. S. 361) as to an officer of a corporation who was compelled to produce books and papers of the corporation whose guilt of an offense was under investigation.

See also—
Wheeler *v.* U. S., 226 U. S. 478.
Grant *v.* U. S., 227 U. S. 74.
Heike *v.* U. S., 227 U. S. 131.

If a litigant has no right in or to the papers in the hands of a third person, nor any legal interest in them, it might possibly violate the fourth amendment to force the latter to produce them by an unwarrantable seizure, actual or constructive.

See In re Comingore (96 Fed. 552, affirmed in 177 U. S. 470), as to the authority of the Secretary of the Treasury, under the regulations as to the custody, use and preservation of the records, papers, and property appertaining to the business of his department, to take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any other purpose than the collection of the revenue, and reserve for his own determination all matters of that character.

This clause was not intended to interfere with the power of courts to compel, through a *subpœna duces tecum*, the production, upon a trial in court, of documentary evidence, and an officer or agent of a corporation may be required, under such process, to produce the books and papers of the corporation.

Hale *v.* Henkel, 201 U. S. 43.
American Lith. Co. *v.* Werckmeister, 221 U. S. 603.
American Tob. Co. *v.* Werckmeister, 207 U. S. 284.
Boyd *v.* U. S., 116 U. S. 616.
Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541.
Potter *v.* Beal, 49 Fed. 793, distinguishing Boyd *v.* U. S., *supra.*
Ex parte Fuller, 262 U. S. 91.
Essgee Co. *v.* U. S., 262 U. S. 151.
Dier *v.* Banton, 262 U. S. 147.

Requiring Corporations to Make Tax Returns

The provisions of the tariff act of August 5, 1909, known as the corporation tax law, requiring certain returns to be filed by corporations in the office of the Commissioner of Internal Revenue, do not offend against this amendment.

Flint *v.* Stone Tracy Co., 220 U. S. 107.

Compelling Interstate Corporations to Produce Contracts

Compelling interstate corporations to produce contracts with coal companies, to be used as evidence before the Interstate Commerce Commission, which would tend to show a discrimination against coal companies not having such contracts and paying the full rate, does not constitute a violation of the right to be secure against unreasonable searches and seizures.

I. C. C. *v.* Baird, 194 U. S. 44.

Requiring Witness to Testify Before Senate as to Business Transaction

A party is not subjected to an unreasonable search by reason of being required, in an investigation conducted by the Senate, to appear as a witness and answer the question whether the firm of which the witness was a member had bought or sold certain stocks for or in the interest of any United States Senator.

In re Chapman, 166 U. S. 669.
Chapman *v.* U. S., 5 App. Cas. (D. C.) 122; 8 App. Cas. 302.

Amend. 4.—Searches and Seizures.

Use of Papers or Property Illegally Obtained as Evidence

The admission of testimony illegally obtained does not constitute a violation of the constitutional guaranty of privilege under this amendment.

Adams *v.* New York, 192 U. S. 597.

The refusal of an application to return private papers, books, and other property, seized by the marshal upon the arrest of a person without warrant or search warrant, and their use in evidence on the trial, is a denial of rights secured by this amendment.

Weeks *v.* U. S., 232 U. S. 383.

The knowledge gained by the Federal Government's own wrong in seizing papers in violation of the owners' constitutional protection against unlawful searches and seizures can not be used by the Government in a criminal prosecution by serving subpœnas upon such owners to produce the original papers, which it had returned after copies had been made, and by obtaining a court order commanding compliance with such subpœnas.

Silverthorne Lbr. Co. *v.* U. S., 251 U. S. 385.

The United States may retain for use as evidence in the criminal prosecution of their owner incriminating documents which are turned over to it by private individuals who procured them without the participation or knowledge of any Government official, through a wrongful search of the owner's private desk and papers in an office.

Burdeau *v.* McDowell, 256 U. S. 465; Justices Brandeis and Holmes dissenting.

But a governmental fishing expedition into the papers of a private corporation on the possibility that they may disclose evidence of crime is so contrary to first principles of justice, if not defiant of this amendment, that an intention to grant the power to a subordinate agency will not be attributed to Congress unless expressed in most explicit language.

Federal Trade Comm. *v.* American Tobacco Co., 264 U. S. 298.

In a prosecution for concealing spirits, admission of testimony of revenue officers as to finding moonshine whiskey in a broken jug and other vessels near the house where the defendant resided and as to suspicious occurrences in that vicinity at the time of their visit, held not violative of the fourth or fifth amendments, even though the witnesses held no warrant and were trespassers on the land, the matters attested being merely acts and disclosures of defendant and his associates outside the house. The protection accorded by the fourth amendment to "persons, houses, papers, and effects" does not extend to open fields.

Hester *v.* United States, 265 U. S. 57.

Necessity of Showing "Probable Cause"

A warrant of commitment by justices of the peace must state a good cause certain, supported by oath.

Ex parte Burford, 3 Cranch 448.

Amend. 4.—Searches and Seizures.

An act of Congress, legislating for the District of Columbia, providing that all vagrants, all idle and disorderly and suspicious persons, etc., shall upon conviction thereof be fined, etc., held nugatory and without effect as to the provisions declaring that "all suspicious persons" could be arrested and prosecuted as criminals. A suspicious character does not constitute crime, nor does it justify the Government in treating the party having such reputation as a criminal, without connecting him with some criminal act or conduct.

Stoutenburgh *v.* Frazier, 16 App. Cas. (D. C.) 229.

Amendment 5.[1]—RIGHTS OF PERSONS.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Leading Cases

Indictment

In Talton *v.* Mayes (163 U. S. 376) it was said:

As the powers of local self-government enjoyed by the Cherokee Nation existed prior to the Constitution, they are not operated upon by the fifth amendment, which had for its sole object to control the powers conferred by the Constitution on the National Government (p. 382).

It was held in Hawaii *v.* Mankichi (190 U. S. 213) that this amendment did not apply to Hawaii during the period of its transition from the Republic of Hawaii to a Territory of the United States.

Double Jeopardy

In Ex parte Lange (18 Wall. 169) it was held:

To every indictment or information charging a party with a known and defined crime or misdemeanor, whether at the common law or by statute, a plea of *autrefois acquit* or *autrefois convict* is a good defense.

In Simmons *v.* U. S. (142 U. S. 148) the court held that an acquittal before a court having no jurisdiction is like all the proceedings in the case, absolutely void, and, therefore, no bar to a subsequent indictment and trial in a court which has jurisdiction of the offense. Where a jury is discharged in a criminal case during the trial for reasons satisfactory to the judge, and the defendant is subsequently tried by another jury, he is not twice in jeopardy.

[1] See p. 25 for ratification. For prohibition on States relating to due process of law, see Amend. 14, p. 660.

In Thompson *v.* U. S. (155 U. S. 271) the court, without the consent of the defendant, discharged the jury and directed another jury to be called. The defendant pleaded he had been once put in jeopardy for the same offense for which he now stood charged. It was held that courts of justice are invested with the authority to discharge a jury from giving a verdict, whenever in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of justice would otherwise be defeated, and to order a trial by another jury; and that defendant is not thereby twice put in jeopardy.

In Grafton *v.* U. S. (206 U. S. 333) it was held that one having been tried for committing an offense in the Philippine Islands and acquitted can not subsequently be tried for the same offense in the United States; for an acquittal anywhere within the jurisdiction of the United States is a good defense against a second trial, although this is not true where one commits an offense which is indictable both in a State and the United States. In such case an acquittal in one court does not preclude a trial in the other.

Self-Incrimination

In Counselman *v.* Hitchcock (142 U. S. 562) the court said:

> It is impossible that the meaning of the constitutional provision can only be that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself. It would doubtless cover such cases, but it is not limited to them. The object was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime. The privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard. * * * It is entirely consistent with the language of article 5 that the privilege of not being a witness against himself is to be exercised in a proceeding before a grand jury.

In Brown *v.* Walker (161 U. S. 600) it was said:

> The danger of extending the principle announced in Counselman *v.* Hitchcock is that the privilege may be put forward for a sentimental reason, or for a purely fanciful protection of the witness against an imaginary danger, and for the real purpose of securing immunity to some third person, who is interested in concealing the facts to which he would testify. Every good citizen is bound to aid in the enforcement of the law and has no right to permit himself, under the pretext of shielding his own good name, to be made the tool of others, who are desirous of seeking shelter behind his privilege.

The court held that the act of Congress of 1893 afforded immunity against prosecution and deprived the witnesses of their constitutional right to refuse to answer.

In the Matter of Moran (203 U. S. 96) the petitioner was compelled to stand up and walk before the jury and during recess of the court the jury was stationed so as to observe his size and walk. Whether this was compelling one to be a witness against himself was a question which the Supreme Court declined to decide.

Amend. 5.—Rights of Persons—Leading Cases.

In Hale *v.* Henkel (201 U. S. 43) it was said that the fifth amendment operates only where the witness is asked to incriminate himself; in other words, to give testimony which may possibly expose him to a criminal charge. But the amendment would not apply if the criminality has already been removed, for it is a present and not a past criminality which is provided against.

Due Process[1]

In Hovey *v.* Elliott (167 U. S. 418) the court approved the definition of "due process of law" as given by Daniel Webster in the Dartmouth College case, in the argument of which he said:

> By the law of the land [which Webster said was equivalent to due process of law] is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society.

The historical and critical meaning of the words "due process of law" was examined in Murray *v.* Hoboken Land, etc., Co. (18 How. 272).

In Hurtado *v.* California (110 U. S. 516) it was held that due process of law within the meaning of the fifth amendment refers to that law of the land which derives its authority from the legislative powers conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed and interpreted according to the principles of the common law.

In Pennoyer *v.* Neff (95 U. S. 714) it was held that due process of law means a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.

In Kelly *v.* Pittsburg (104 U. S. 78) it was held that where the necessities of the Government, the nature of the duty to be performed, and the customary usages of the people have established a procedure for the collection of taxes in this country, it is, and always has been, due process of law.

In Ex parte Wall (107 U. S. 265) it was held that the action of the court in cases within its jurisdiction is due process of law. It is a regular and lawful method of proceeding practiced from time immemorial. Conceding that an attorney's calling or profession is his property, within the true sense and meaning of the Constitution, it is certain that in many cases at least he may be excluded from the pursuit of it by the summary action of the court of which he is an attorney.

In Public Clearing House *v.* Coyne (194 U. S. 497) it was held that Executive orders may be due process of law.

In Hopt *v.* Utah (110 U. S. 574) it was held that in felony cases it is not within the power of the accused to dispense with the statutory requirement as to his personal presence at the trial,

[1] See Amend. 14, p. 660, for restriction on State power.

for to deprive him of his life or liberty without his personal presence would be without that due process of law required by this amendment.

In Crowley *v.* Christensen (137 U. S. 90) it was said:

> As to the enjoyment of property, the rule is general that it must be accompanied with such limitations as will not impair the equal enjoyment by others of their property.

In Dayton-Goose Creek Ry. *v.* U. S. (263 U. S. 456) it was held that the recapture by the Government of excess income of railroads is not a taking of private property without due process of law.

Property and Eminent Domain

In Mitchell *v.* Harmony (13 How. 115) it was held that private property may be taken or destroyed in time of war to prevent it from falling into the hands of the enemy, and that in such cases full compensation must be made to the owner by the Government.

Gibson *v.* U. S., 166 U. S. 269, stating the doctrine in reference to riparian ownership.
Bauman *v.* Ross, 167 U. S. 548, treating of the benefit to owner as an element of just compensation.
Mugler *v.* Kansas, 123 U. S. 623.
Pumpelly *v.* Green Bay Co., 13 Wall. 166.
Kohl *v.* U. S., 91 U. S. 367.
U. S. *v.* Gettysburg, etc., R. Co., 160 U. S. 668.
Bedford *v.* U. S., 192 U. S. 217.

Construction and Operation

In General

This amendment is a limitation upon the Federal Government and has no reference to State action.

Barron *v.* Baltimore, 7 Pet. 243.
Fox *v.* Ohio, 5 How. 410.
Withers *v.* Buckley, 20 How. 84.
Twichell *v.* Pennsylvania, 7 Wall. 325.
U. S. *v.* Cruikshank, 92 U. S. 542.
Kelly *v.* Pittsburgh, 104 U. S. 79.
Eilenzecker *v.* Plymouth County, 134 U. S. 31.
Talton *v.* Mayes, 163 U. S. 376.
Capital City Dairy Co. *v.* Ohio, 183 U. S. 238.
Ohio *v.* Dollison, 194 U. S. 445.
Jack *v.* Kansas, 199 U. S. 372.
Hunter *v.* Pittsburgh, 207 U. S. 161.
McElvaine *v.* Brush, 142 U. S. 158.
Hallinger *v.* Davis, 146 U. S. 319.
Thorington *v.* Montgomery, 147 U. S. 492.
Monongahela Nav. Co. *v.* U. S., 148 U. S. 324.
Brown *v.* New Jersey, 175 U. S. 174.
Howard *v.* Kentucky, 200 U. S. 164.
Barrington *v.* Missouri, 205 U. S. 483.
McFaddin *v.* Evans-Snider-Buel Co., 185 U. S. 509.
Ensign *v.* Pennsylvania, 227 U. S. 592.

Constitutional provisions for the security of person or property should be liberally construed.

Boyd *v.* U. S., 116 U. S. 616.

Amend. 5.—Rights of Persons—Construction.

This amendment relates to the prosecution of an accused person which is technically criminal in its nature.

U. S. *v.* Zucker, 161 U. S. 475.

Applicability to District of Columbia

The jurisdiction of Congress in respect to the District of Columbia, in matters municipal as well as political, is exclusive, and not controlled by the provisions of the fourteenth amendment, though in the exercise of such legislative powers Congress is subject to the provisions of the fifth amendment.

Wight *v.* Davidson, 181 U. S. 371.
Terminal Taxicab Co. *v.* Kutz, 241 U. S. 252.

Indictment

Congress Without Power to Limit the Constitutional Right

The purpose of the amendment was to limit the powers of the legislature as well as of the prosecuting officers of the United States, and no declaration of Congress that a crime is infamous is needed to secure, or competent to defeat, the constitutional safeguard.

Ex parte Wilson, 114 U. S. 426.

Organization of Grand Jury

The presentment of an indictment by the grand jury in a body is not demanded, and the failure to so present it does not go to the jurisdiction of the Federal court.

Breese *v.* U. S., 226 U. S. 1.

Socialists held denied no constitutional or statutory rights because grand jury was composed exclusively of members of other parties and of property owners.

Ruthenberg *v.* U. S., 245 U. S. 480.

Definition of "Infamous Crime"

An infamous crime is one for which the statute authorizes infamous punishment. If the penalty prescribed is imprisonment in a penitentiary for not less than one year, the crime is infamous whether the penalty carries with it hard labor or not. If the imprisonment prescribed is "for a longer period than one year," presentment or indictment by a grand jury is indispensable.

The following are examples of crimes declared by the courts to be infamous: Counterfeiting; fraudulent altering of poll books; falsification of reports by national-bank cashier; embezzlement by national-bank president; fraudulent voting; intimidating voters; adultery; grand larceny.

Ex parte Wilson, 114 U. S. 417.
Mackin *v.* U. S., 117 U. S. 354.
Parkinson *v.* U. S., 121 U. S. 281.
See also—
U. S. *v.* DeWalt, 128 U. S. 393.

Amend. 5.—Rights of Persons—Indictment.

In re Claasen, 140 U. S. 204.
U. S. *v.* Smith, 40 Fed. 757.
U. S. *v.* Sutton, 47 Fed. 129.
State *v.* Clark, 56 Pac. 767.
U. S. *v.* Moreland, 258 U. S. 433.
Brede *v.* Powers, 263 U. S. 4.
Wyman *v.* U. S., 263 U. S. 14.

Application to Aliens

Aliens can not be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty, or property without due process of law.

Wong Wing *v.* U. S., 163 U. S. 238.
Li Sing *v.* U. S., 180 U. S. 495.

Application to Consular Criminal Courts

Statutes giving consuls criminal jurisdiction are not invalid for not preserving to an accused person the right to be tried only after presentment or indictment by a grand jury.

In re Ross, 44 Fed. 185, affirmed in 140 U. S. 459.

Application to Local Legislation of Indian Nations

This amendment does not apply to the local legislation of the Cherokee Nation, so as to require all prosecutions for offenses committed against the laws of that nation to be initiated by a grand jury organized in accordance with the provisions of that amendment. The powers of local government exercised by the Cherokee Nation are not Federal powers created by and springing from the Constitution, but are local powers subject to the general provisions of the Constitution and the paramount authority of Congress.

Talton *v.* Mayes, 163 U. S. 382.
Lone Wolf *v.* Hitchcock, 187 U. S. 563.

Application to Annexed Territory

The provision in the resolution annexing the Hawaiian Islands that the municipal legislation not "contrary to the Constitution of the United States" should remain in force was not intended to abolish at once the criminal procedure theretofore in force upon the islands and to substitute immediately and without new legislation the common-law proceedings by grand and petit jury, and there may be a conviction for manslaughter on an indictment not found by a grand jury.

Hawaii *v.* Mankichi, 190 U. S. 211.

The acts of a Territorial legislature are not laws of the United States within the meaning of United States Revised Statutes, section 753, and this amendment does not take up unto itself the local law as to how the grand jury should be made up and raise it to a constitutional requirement.

Matter of Moran, 203 U. S. 96.
Rawlins *v.* Georgia, 201 U. S. 638.

Amend. 5.—Rights of Persons—Indictment.

Indictment Before Removal

On a petition for removal of an accused from one district to another, under section 1014, Revised Statutes, an indictment in the district to which removal is sought is at least *prima facie* evidence of probable cause.

The Constitution does not require two such inquiries and adjudications. The Government, having once satisfied the provision for an inquiry and obtained an adjudication by the proper tribunal of the existence of probable cause, ought to be able without further litigation concerning that fact to bring the party charged into court for trial.

Beavers *v.* Henkel, 194 U. S. 84.

While an indictment constitutes *prima facie* evidence of probable cause, it is not conclusive, and under section 1014, Revised Statutes, when a person has been indicted in another State than the district of arrest the judge of the district in which he is arrested must act judicially and not merely ministerially, and, before issuing a warrant of removal, must look into the indictment to ascertain whether an offense against the United States is charged, find whether there was probable cause, and determine whether the court to which the accused is sought to be removed has jurisdiction of the same.

Tinsley *v.* Treat, 205 U. S. 20.

Change in Indictment

A person can only be tried upon the indictment as found by the grand jury, and especially upon its language found in the charging part of the instrument. A change in the indictment deprives the court of the power of proceeding to try the accused.

Ex parte Bain, 121 U. S. 12.

Dismissal or Nolle Prosequi

Judgment dismissing indictment because barred by limitation is a bar to a second prosecution under new indictment for the same offense.

U. S. *v.* Oppenheimer, 242 U. S. 85.

Courts-Martial

This amendment, instead of limiting the jurisdiction of courts-martial, leaves it to be exercised to the fullest extent, under such "rules for the government and regulation of the land and naval forces" as Congress might, under the power given to it by the Constitution, see fit to prescribe.

Runkle *v.* U. S., 19 Ct. Cl. 396.
Ex parte Reed, 100 U. S. 21.

The fifth amendment expressly excepts "cases arising in the land and naval forces," and leaves such cases subject to the rules for the government and regulation of those forces which, by Article I, section 8, Congress is empowered to make.

Kurtz *v.* Moffitt, 115 U. S. 500.

Double Jeopardy

Definition

A general verdict of acquittal upon an issue of not guilty to an indictment not objected to before verdict as being insufficient is a bar to a second indictment for the same offense, even though the first indictment be so defective that it would be set aside on writ of error. But, on the other hand, a defendant who procures a judgment to be set aside may be tried anew on the same or another indictment for the same offense.

U. S. *v.* Ball, 163 U. S. 669.
Collins *v.* Loisel, 262 U. S. 426.

A prisoner is not relieved from his first jeopardy so as to preclude a second until the verdict of the jury is rendered for or against him. So twice in jeopardy has no reference to mistrials. Nor does the prohibition apply where a jury has been discharged from necessity, or the ends of justice would be defeated, as where a juror is so biased as to be unfit to sit on the case, or where the jury can not agree.

U. S. *v.* Perez, 9 Wheat. 579.
U. S. *v.* Haskell, 4 Wash. (C. C.) 410.
Simmons *v.* U. S., 142 U. S. 155.
Thompson *v.* U. S., 155 U. S. 274.
Dreyer *v.* Illinois, 187 U. S. 71.

The phrase "life and limb" as here used would, if strictly construed, confine the cases wherein the plea of jeopardy could be raised to a very narrow compass; but the courts have construed it liberally, and have held it to embrace all cases wherein a second prosecution is attempted for the same offense, whether felony or misdemeanor. In order that the plea may be effective, however, the prosecution must be for the same offense.

Ex parte Lange, 18 Wall. 163.
Fox *v.* Ohio, 5 How. 439.
In re Snow, 120 U. S. 286.
Cross *v.* North Carolina, 132 U. S. 138.

It is very clearly the spirit of this clause to prevent a second punishment under judicial proceedings for the same crime, so far as the common law gave that protection.

Ex parte Lange, 18 Wall. 170.

This amendment was not intended to do away with the rule that a judgment of acquittal on the ground of the bar of the statute of limitation is a protection against a second trial.

U. S. *v.* Oppenheimer, 242 U. S. 85.

Proceedings in Courts of Different Jurisdictions

Federal and State courts.—An acquittal in a State court of a charge of murder can not be pleaded in bar of an indictment in a Federal court on the same facts charging the defendant, being a white man, with the killing of an Indian. A person living under two Governments or jurisdictions, as does every inhabit-

ant of the States of this Union, may commit two crimes by doing or omitting one act—one against the State and the other against the United States. And in such case the conviction or acquittal of the one crime in a forum of the State is no bar to a prosecution for the other in a forum of the United States.

U. S. *v.* Barnhart, 22 Fed. 290.
U. S. *v.* Mason, 213 U. S. 115.
Fox *v.* Ohio, 5 How. 434.
Moore *v.* Illinois, 14 How. 20.
U. S. *v.* Lanxa, 260 U. S. 377.

Proceeding by Congress and criminal prosecution.—A conviction and sentence of an individual, not a Member of Congress, by the United States House of Representatives for assault and battery upon a Member of the House, for and on account of words spoken by him in the House in debate, are not a bar to a criminal prosecution by indictment for the assault and battery.

U. S. *v.* Houston, 4 Cranch (C. C.), 261.

Crime against the law of nations tried in any court.—Robbery on the seas is considered as an offense within the criminal jurisdiction of all nations. It is against all and punished by all; and there can be no doubt that the plea of *autrefois acquit* would be good in any civilized State, though resting on a prosecution instituted in the courts of any other civilized State.

U. S. *v. The Pirates*, 5 Wheat. 197.

Offenses abroad.—Citizens of the United States while in a foreign country are subject to penal laws passed by the United States to protect itself and its property, and for infractions abroad are triable in the district where they are first brought.

U. S. *v.* Bowman, 260 U. S. 94.

Civil courts and courts-martial.—The finding of a military court of inquiry acquitting a person of all blame is not a complete bar to a prosecution in the civil courts.

U. S. *v.* Clark, 31 Fed. 715.

In Wilkes *v.* Dinsman (7 How. 123) it was said that proceedings of a court-martial are a bar to subsequent indictments in courts of common law for the same offense, but in Steiner's case (6 Op. Atty. Gen. 413), referring to this as a *dictum*, the Attorney General said:

> That may be so in the strict meaning of the words "same offense." But the position can not be admitted, if intended to cover all the criminal relations of the same act. An officer, on account of one and the same act, may be tried for assault at common law, and for ungentlemanly conduct by the law martial, and either may precede the other (p. 419).

See also—
U. S. *v.* Cashiel, 1 Hughes (U. S.), 558.
In re Fair, 100 Fed. 151.
Coleman *v.* Tennessee, 97 U. S. 516.

Philippine courts.—For cases under the Philippine bill of rights, see—

Diaz *v.* U. S., 223 U. S. 442.
Gavieres *v.* U. S., 220 U. S. 338.
Flemister *v.* U. S., 207 U. S. 372.
Grafton *v.* U. S., 206 U. S. 333.

The Bar Must Be Pleaded

A former conviction must be pleaded.

U. S. *v.* Wilson, 7 Pet. 159.

Application of Clause to Offenses

This constitutional guaranty by a liberal construction is held to apply to misdemeanors as well as to treason and felony.

Berkowitz *v.* U. S., 93 Fed. 452.

Where an issue raised as to the existence of the act or fact denounced has been tried in a criminal proceeding, instituted by the United States, and a judgment of acquittal has been rendered in favor of a particular person, that judgment is conclusive in favor of such person, on the subsequent trial of a suit *in rem* by the United States, where, as against him, the existence of the same act or fact is the matter in issue, as a cause for the forfeiture of the property prosecuted in such suit *in rem*.

Coffey *v.* U. S., 116 U. S. 443. For a discussion of this case see U. S. *v.* Three Copper Stills, 47 Fed. 499.

A plea of former acquittal must be upon a prosecution for the same identical offense.

Burton *v.* U. S., 202 U. S. 344.

The test of identity of offenses is whether the same evidence is required to sustain them; if not, then the fact that both charges relate to and grow out of one transaction does not make a single offense where two are defined by the statutes.

Morgan *v.* Devine, 237 U. S. 632.
Carter *v.* McClaughry, 183 U. S. 365.

The usual test of the identity of the offenses may be thus expressed: Unless the first indictment were such as the prisoner might have been convicted upon proof of the facts contained in the second indictment, an acquittal on the first indictment can be no bar to the second. Where a person is convicted of a crime which has several incidents included in it, a second trial for one of those incidents is putting him twice in jeopardy.

Berkowitz *v.* U. S., 93 Fed. 452.
Nielsen, Petitioner, 131 U. S. 188.

When the indictment is for a distinct offense from that on which the verdict in the previous trial was found, a plea of former jeopardy can not be sustained.

U. S. *v.* Randenbush, 8 Pet. 289.

The power to punish for contempt remains in each House of Congress, and it can not be held that a statute is invalid be-

cause it provides that contumacy in a witness called to testify in a matter properly under consideration by either House, and deliberately refusing to answer questions pertinent thereto, shall be a misdemeanor against the United States.

In re Chapman, 166 U. S. 672.

Matters of Pleading and Procedure

The ignoring of an indictment by one grand jury is no bar to a subsequent grand jury investigating the charge and finding an indictment for the same offense.

U. S. *v.* Martin, 50 Fed. 918.

A general verdict of acquittal upon the issue of not guilty to an indictment undertaking to charge murder, and not objected to before the verdict as insufficient in that respect, is a bar to a second indictment for the same killing.

U. S. *v.* Ball, 163 U. S. 662.
Kepner *v.* U. S., 195 U. S. 130.

Where the court, on entertaining a demurrer to the indictment after a plea of not guilty had been entertained and not withdrawn, dismissed the jury in order to enable the jury to be again arraigned and plead, the accused was not twice put in jeopardy.

Lovato *v.* New Mexico, 242 U. S. 199.

Courts are invested with authority to discharge a jury from giving any verdict, whenever in their opinion there is a manifest necessity therefor, and to order a new trial by another jury; and a defendant is not thereby twice put in jeopardy.

Thompson *v.* U. S., 155 U. S. 274.
Ex parte Bigelow, 113 U. S. 328.

The discharge of the jury by the court from giving any verdict, without the consent of the prisoner, the jury being unable to agree, is not a bar to a future trial for the same offense.

U. S. *v.* Perez, 9 Wheat. 579.
Keerl *v.* Montana, 213 U. S. 135.
Dreyer *v.* Illinois, 187 U. S. 86.
Robertson *v.* Baldwin, 165 U. S. 281.
Simmons *v.* U. S., 142 U. S. 148.
Logan *v.* U. S., 144 U. S. 297.

The return of a verdict on Sunday and the discharge of the jury are a bar to a further prosecution.

U. S. *v.* Ball, 163 U. S. 662.

Where a defendant was acquitted of homicide but convicted of an assault, and upon appeal by him the judgment was reversed, his subsequent conviction of the higher crime was held not to be a violation of the act of Congress for the government of the Philippines (of July 1, 1902, 32 Stat. 691, chap. 1369), providing that "no person for the same offense shall be twice put in jeopardy of punishment."

Trono *v.* U. S., 199 U. S. 521.
Stroud *v.* U. S., 251 U. S. 15.

Where a law authorizes imprisonment or a fine, and the court, through inadvertence, has imposed both punishments, after the fine is paid the court can not, during the same term, change its judgment by sentencing the defendant to imprisonment.

Ex parte Lange (18 Wall. 175), in which the court said that this clause was designed as much to prevent the criminal from being twice punished for the same offense as from being tried for it.

Self-Incrimination

Construction of Clause

This clause must be given a broad construction in favor of the right which it was intended to secure, the object being to insure a witness, in any investigation in the Federal courts, against being compelled to give testimony which might tend to incriminate him. It applies, however, only to criminal cases, and the term "criminal case" means a prosecution for a criminal offense against the party who is a witness.

Counselman *v.* Hitchcock, 142 U. S. 562.
Brown *v.* Walker, 161 U. S. 596.
See also—
Lees *v.* U. S., 150 U. S. 480.
Boyd *v.* U. S., 116 U. S. 616.
I. C. C. *v.* Baird, 194 U. S. 45.
U. S. *v.* Lombardo, 228 Fed. 980, holding sec. 6 of the white slave traffic act of June 25, 1910 (36 Stat. 826), unconstitutional under this amendment.

It is clearly recognized that the giving of testimony and the attendance upon court or grand jury in order to testify are public duties which every person within the jurisdiction of the Government is bound to perform upon being properly summoned, and for performance of which he is entitled to no further compensation than that which the statutes provide.

Blair *v.* U. S., 250 U. S. 281.

All Witnesses Are Entitled to Protection

It is impossible that the meaning of this provision can only be that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself. It is not limited to such cases, but the object was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime. The privilege is limited to criminal matters, but it is as broad as the mischief which it seeks to guard.

Counselman *v.* Hitchcock, 142 U. S. 562, in which act of Congress (Revised Statutes, sec. 860) was held unconstitutional because not affording the witness absolute immunity against future prosecution for the offense to which the question related.

A corporation is not a person within the meaning and protection of this amendment.

Hale *v.* Henkel, 201 U. S. 43.
Baltimore, etc., R. Co. *v.* I. C. C., 221 U. S. 612.
American Lith. Co. *v.* Werckmeister, 221 U S. 603.
American Tob. Co. *v.* Werckmeister, 207 U. S. 284.

Amend 5.—Rights of Persons—Self-incrimination.

An officer of a corporation who actually holds the physical possession, custody, and control of books and papers of the corporation, which he is required by a *subpœna duces tecum* to produce, is not entitled to the same protection against exposing the contents thereof which would tend to incriminate him as if the books and papers were absolutely his own.

Wilson *v.* U. S., 221 U. S. 361.
Dreier *v.* U. S., 221 U. S. 394.
Grant *v.* U. S., 227 U. S. 74.
Heike *v.* U. S., 227 U. S. 131.
Perlman *v.* U. S., 247 U. S. 7.
Ex parte Fuller, 262 U. S. 91.
Dier *v.* Banton, 262 U. S. 147.
McCarthy *v.* Arndstein, 262 U. S. 355.
Essgee Co. *v.* U. S. 262 U. S. 151.

Claim of Privilege and Duty of the Court

A witness can not avoid answering questions upon his mere statement that his answers to them will tend to incriminate him; that is for the court to decide.

Foot *v.* Buchanan, 113 Fed. 156.
In re Hess, 134 Fed. 109.
Ex parte Irvine, 74 Fed. 960.
See also—
In re Kanter, 117 Fed. 356, holding that presumption favors the claim of privilege.

Before Grand Jury

It is entirely consistent with the language of this article that the privilege of not being a witness against himself is to be exercised in a proceeding before a grand jury. The provisions of the sixth amendment distinctly mean a criminal prosecution against a person who is accused and who is to be tried by a petit jury, but a criminal prosecution under that article is much narrower than a "criminal case" under this article.

Counselman *v.* Hitchcock, 142 U. S. 563.
See also—
Sanderson's case, 3 Cranch (C. C.), 638.
Devaughn's case, 2 Cranch (C. C.), 501, wherein it was held that a witness before the grand jury is bound to answer a question although he makes oath that he can not answer it without incriminating himself.

It is fatal to an indictment that the defendant was called to testify before the grand jury in the particular matter from which it resulted without being informed or knowing that his own conduct was the subject under investigation.

U. S. *v.* Edgerton, 80 Fed. 374.

In Immigration Proceedings

Where a person arrested as an alien within the United States in violation of law in that he had in his possession for distribution printed matter advocating overthrow of the Government by force or violence, upon being called and sworn as a witness by the Government to prove his alienage, stood mute—held, that admission of alienage, which is not an element of the crime of

sedition, would not have tended to incriminate him, and that the immigration officers might properly have inferred the fact of alienage from his silence.

Bilokumsky *v.* Tod, 263 U. S. 149.

Right to Be Informed of Privilege

A defendant who voluntarily takes the stand and testifies upon his own behalf can not claim the protection of this amendment and may be subjected to cross-examination concerning his statement. If the witness elects to waive his privilege, as he may doubtless do, since the privilege is for his protection and not for that of other parties, and discloses his criminal connections he is not permitted to stop, but must go on and make a full statement.

Powers *v.* U. S., 223 U. S. 303.
Brown *v.* Walker, 161 U. S. 597.
Reagan *v.* U. S., 157 U. S. 301.
Sawyer *v.* U. S., 202 U. S. 165.

As a Personal Privilege

The right of a person to refuse to incriminate himself is purely a personal privilege of the witness. It does not permit him to plead the fact that some third person might be incriminated by his testimony, even though he were the agent of such person, and an officer or agent of a corporation can not refuse to testify because his testimony may incriminate the corporation.

Hale *v.* Henkel, 201 U. S. 43.
McAlistor *v.* Henkel, 201 U. S. 90.

The privilege is personal and can not be invoked by counsel.

In re Knickerbocker S. B. Co., 136 Fed. 958.
See also—
In re O'Shea, 166 Fed. 180, as to permitting a witness to consult counsel.

Absolute Immunity

In general.—This amendment does not deprive the law-making authority of the power to compel the giving of testimony even though the testimony when given might serve to incriminate the one testifying, provided immunity be accorded, the immunity, of course, being required to be complete; that is, in all respects commensurate with the protection guaranteed by the constitutional limitation.

Glickstein *v.* U. S., 222 U. S. 139.
American Litho. Co. *v.* Werckmeister, 221 U. S. 603.

Assurance by the court of immunity.—An assurance by the court that no information given by a person in his answers would or could be used against him in any prosecution is not sufficient. He can not be required to waive his constitutional privilege upon such an assurance by the court, but has the right to stand upon his constitutional privilege notwithstanding such assurance and to remain silent whenever any question is asked the answer to which may tend to incriminate him.

Foot *v.* Buchanan, 113 Fed. 156.

Amend. 5.—Rights of Persons—Self-incrimination.

Protection against prosecution in State courts.—A State antitrust statute which, as construed by the State supreme court, permits a witness to be asked only material questions relating to information regarding any alleged violation of the statute relating to transactions within the State, and therefore makes it immaterial and consequently not permissible to ask a witness in relation to matters of interstate commerce, which might constitute a violation of the Federal antitrust act, does not deprive a witness of due process of law which the statute provides for immunity from prosecution in the State courts.

Jack *v.* Kansas, 199 U. S. 372.
Hale *v.* Henkel, 201 U. S. 43.

A witness before the Federal grand jury can not be required to produce an account book the contents of which would tend to support a charge in a State court that he had been an abettor of a person charged with a violation of the criminal laws of the State.

Ballman *v.* Fagin, 200 U. S. 186.

Immunity in bankruptcy proceedings.—A witness under examination before a referee in bankruptcy can not be compelled to answer a question which will incriminate him. No act of Congress can deprive a citizen of the privilege afforded by the Constitution unless it supplies a complete protection from all perils against which the Constitution was intended to provide. The provision in the bankruptcy act that "no testimony given by him shall be offered in evidence against him in any criminal proceeding" can have no other effect than to protect him against the use of his testimony in any prosecution in the courts of the United States and would be no answer to a prosecution which might be instituted in the State courts, which are not created by the acts of Congress, and which prescribe their own rules of proceeding independently of Congress, and would therefore not provide complete protection.

In re Nachman, 114 Fed. 996.
Arndstein *v.* McCarthy, 254 U. S. 71.

An order by a district court that a bankrupt should deposit his books of account in the office of the receiver, there to remain in the custody of the bankrupt, the latter to afford the receiver free opportunity to inspect the same but the receiver to use and permit them to be used only for the purpose of the civil administration of the estate, and not for any criminal proceeding, touches no constitutional rights.

In re Harris, 221 U. S. 274.
See also—
Johnson *v.* U. S., 228 U. 7. 457, citing and qualifying In re Harris, *supra.*

Immunity in interstate commerce proceedings.—Act providing that no person shall be excused from testifying before Interstate

Commerce Commission on the ground that his testimony may tend to incriminate him or subject him to penalty or forfeiture, but that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction concerning which he might testify is not incompatible with this clause.

Brown *v.* Walker (161 U. S. 591), opinion by a bare majority of the court, wherein it was said:

> Stringent as the general rule is, however, certain classes of cases have always been treated as not falling within the reason of the rule and therefore constituting apparent exceptions. When examined these cases will all be found to be based upon the idea that if the testimony sought can not possibly be used as a basis for or in aid of a criminal prosecution against the witness the rule ceases to apply, its object being to protect the witness himself and no one else (p. 597).

See also—

I. C. C. *v.* Baird, 194 U. S. 45.

Hale *v.* Henkel, 201 U. S. 43, and Nelson *v.* U. S., 201 U. S. 92, as to the proviso to the general appropriation act of Feb. 25, 1903, which is almost the exact language of the above act.

The act of Feb. 11, 1893, conferring immunity in certain cases has been construed as bestowing immunity only to witnesses who are unwilling or involuntary ones, and not to witnesses giving testimony without the assertion of the constitutional privilege, or declining to give it upon any ground other than because of its incriminating tendency.

U. S. *v.* Elton, 222 Fed. 428.

Requiring production of private papers.—The act of June 22, 1874, so far as it authorizes an order requiring the production of books and papers in actions for penalties and forfeitures violates this clause.

Boyd *v.* U. S., 116 U. S. 633, wherein the court said there is an intimate relation between the fourth and fifth amendments.

Admission in evidence of paper obtained through unconstitutional search and seizure over objection of owner when indicted for crime compels him to be a witness against himself.

Gouled *v.* U. S., 255 U. S. 298.

When One May Be Compelled to Testify

This clause does not impair the obligation of a witness to testify if a prosecution against him be barred by the lapse of time, a pardon, or by statutory enactment.

Robertson *v.* Baldwin, 165 U. S. 281.

That testimony may tend to degrade a witness in public estimation does not exempt him from the duty of disclosure, if the proposed testimony is material to the issue on trial.

Brown *v.* Walker, 161 U. S. 605.

On a question whether a blouse belonged to the prisoner, an objection under this amendment to the testimony of a witness that the prisoner put it on and it fitted him can not be sustained.

Holt *v.* U. S., 218 U. S. 245.

Amend. 5.—Rights of Persons—Self-incrimination.

Witnesses before grand jury investigating charge of gambling against others can not justify, under this amendment, their refusal to answer whether game of cards was going on, it not being criminal to sit at table where cards are being played, under Compiled Laws of Alaska, 1913, section 2032, or to join in game unless played for value.

Mason *v.* U. S., 244 U. S. 362.

Waiver of Privilege

The privilege secured by this clause is purely personal and may be waived.

In re Tracy, 177 Fed. 532.

In Diggs *v.* U. S. (220 Fed. 545) the court sustained an instruction as follows:

A defendant is not required under the law to take the witness stand. He can not be compelled to testify at all, and if he fails to do so no inference unfavorable to him may be drawn from that fact, nor is the prosecution permitted in that case to comment unfavorably upon the defendant's silence; but where a defendant elects to go upon the witness stand and testify, he then subjects himself to the same rule as that applying to any other witness.

Compare—

Balliet *v.* U. S., 129 Fed. 689.

A defendant who voluntarily takes the stand in his own behalf, thereby waiving his privilege, may be subjected to cross-examination concerning his statement.

Powers *v.* U. S., 223 U. S. 303.
Reagan *v.* U. S., 157 U. S. 301.
Burrell *v.* Montana, 194 U. S. 572.

If the witness elects to waive his privilege, and discloses his criminal connections, he must make a full disclosure.

Brown *v.* Walker, 161 U. S. 597.
Sawyer *v.* U. S., 202 U. S. 165.

Tender of Pardon

As a pardon tendered by the President is not effective until accepted, a person to whom a pardon has been tendered may refuse it and still refuse to testify on the ground that his testimony may have an incriminating effect.

Burdick *v.* U. S., 236 U. S. 79.

Liability for Perjury

A statute guaranteeing immunity in compelling the giving of testimoy does not bar a prosecution for perjury for false swearing.

Cameron *v.* U. S., 231 U. S. 710.
Glickstein *v.* U. S., 222 U. S. 139.

Amend. 5.—Rights of Persons—Due Process.

Due Process

Comparison with Fourteenth Amendment

It is, however, necessary, to observe the substantial distinction between the fifth amendment, which is obligatory only on the United States, and the fourteenth amendment, which is obligatory only on the States. The limitation in the former is "without due process of law." In the fourteenth amendment this limitation is accompanied with a prohibition of the denial of the "equal protection of the laws."

U. S. *v.* New York, etc., R. Co., 165 Fed. 742.

Affirmation of Principles of Common Law

This amendment only announces and reaffirms the ancient principles of the common law, and prevents them from being unjustly invaded by the power of the Federal Government.

North Carolina *v.* Vanderford, 35 Fed. 282.

Vested Rights

Act of 1910, authorizing withdrawal of lands for public reservations, could not constitutionally authorize Executive withdrawal of land equitably vested in State under a lieu selection.

Wyoming *v.* U. S., 255 U. S. 489.

Restraint on Executive, Legislative, and Judicial Departments

The judicial department of the Government is necessarily governed in the exercise of its functions by the rule of due process of law.

Hovey *v.* Elliott, 167 U. S. 409.

Executive order declaring void a contract of the Government held a deprivation of property without due process.

U. S. Harness Co. *v.* Graham, 288 Fed. 929.

The article is a restraint on the legislative as well as on the executive and judicial powers of the Government and can not be so construed as to leave Congress free to make any process "due process of law" by its mere will.

Murray *v.* Hoboken Land, etc., Co., 18 How. 277.

This clause is a limitation on the exercise of the grants of power, as that Congress can not so regulate commerce as to deprive any person of life, liberty, or property without due process of law.

U. S. *v.* Adair, 152 Fed. 737, in connection with which see Adair *v.* U. S., 208 U. S. 161.

Wilson *v.* New, 243 U. S. 332.

Operation in Acquired Territory

The provision in the resolution annexing the Hawaiian Islands that the municipal legislation not "contrary to the Constitution of the United States" should remain in force, was not intended to abolish at once the criminal procedure theretofore in force upon the islands, and to substitute immediately and without new legislation the common-law proceedings by grand and petit jury.

Hawaii *v.* Mankichi, 190 U. S. 197.

Amend. 5.—Rights of Persons—Due Process.

Under the act of Congress for the government of the Philippine Islands, in which the due process clause of the Constitution is made part of the statute, the court said, in Ong Chang Wing *v.* U. S. (218 U. S. 272):

> If an accused has been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded within the authority of a constitutional law, then he has had due process of law.

See also—

Public Utility Comrs. *v.* Ynchausti, 251 U. S. 401.

In Rassmussen *v.* U. S. (197 U. S. 516) the provision in the Alaska Code that in trials for misdemeanors six persons should constitute a legal jury, was held repugnant to this amendment.

For Porto Rico law providing for summary foreclosure of mortgages, see Bianchi *v.* Morales, 262 U. S. 170.

Application to Corporations

This clause applies to corporations as well as to natural persons. To deprive a corporation of its property or to burden it is, in fact, to deprive the corporators of their property or to lessen its value.

Railroad Tax Cases, 13 Fed. 722.
Santa Clara County *v.* Southern Pac. Co., 18 Fed. 389, affirmed on other grounds, 118 U. S. 394.

Application to Indians

In general.—The rights acquired by Indians under an act of Congress, and which have become vested, are protected from repeal.

Choate *v.* Trapp, 224 U. S. 665.

After Indians admitted to citizenship.—Indians are wards of the Nation, and Congress has plenary control over tribal relations and property, and may be exercised as to restrictions upon alienation.

Williams *v.* Johnson, 239 U. S. 414.
Tiger *v.* Western Inv. Co., 221 U. S. 286.
Brader *v.* James, 246 U. S. 88.

Changing Indian laws of descent and distribution.—Where the original statute providing for a permanent enrollment of an Indian tribe and the appropriation of tribal funds and allotment of lands recognized the tribal laws of descent and distribution, the subsequent repeal of such tribal laws and the substitution by act of Congress of other rules of descent and distribution did not deprive one entitled to enrollment of property without due process of law.

Sizemore *v.* Brady, 235 U. S. 441.

Acts authorizing suits against certain Indians as a class in the Court of Claims to impress a lien on their property for services rendered in securing it, and providing for their representation by certain officials without making the United States a party, held consistent with due process.

Winton *v.* Amos, 255 U. S. 373.

What Constitutes Due Process of Law

In general.—Due process of law in this clause refers to that law of the land which derives its authority from the legislative power conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed, and interpreted according to the principles of the common law.

Hurtado *v.* California, 110 U. S. 535.

The words "due process of law" were undoubtedly intended to convey the same meaning as the words "by the law of the land" in Magna Charta.

Murray *v.* Hoboken Land, etc., Co., 18 How. 276.
Ochoa *v.* Hernandez, 230 U. S. 139.

As to the words from Magna Charta incorporated into the constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: That they were intended to secure the individual from the arbitrary exercise of the powers of government unrestrained by the established principles of private rights and distributive justice.

Bank of Columbia *v.* Okely, 4 Wheat. 244.

Not necessarily a proceeding in a court of justice.—The words "due process of law" do not necessarily imply a regular proceeding in a court of justice, or after the manner of such courts.

Davidson *v.* New Orleans, 96 U. S. 102.
Public Clearing House *v.* Coyne, 194 U. S. 508.

Hearing before a special court.—Act of Congress of February 11, 1903, providing that in certain equity suits in which the United States is a party the hearing shall be held before not less than three circuit judges is not invalid as denying due process of law, nor discriminatory.

U. S. *v.* New York, etc., R. Co., 165 Fed. 742.

Court sitting at a time not authorized by law.—If the record shows that prisoners are detained under a conviction and sentence of a court which was sitting at a time not authorized by law, a case is presented of a deprivation of liberty without due process of law.

Ex parte Harlan, 180 Fed. 119.

Trial by jury not essential to due process.—Due process of law does not require a plenary suit and a trial by jury in all cases where property or personal rights are involved. The important right of personal liberty is generally determined by a single judge on a writ of *habeas corpus*, using affidavits or depositions for proofs where facts are to be established. In all cases that kind of procedure is due process of law which is suitable and proper to the nature of the case and sanctioned by the established customs and usages of the courts.

Ex parte Wall, 107 U. S. 289.
Lovato *v.* New Mexico, 242 U. S. 199.

Amend. 5.—Rights of Persons—Due Process.

Trial by court-martial of military prisoner for offense committed during imprisonment is not inconsistent with right to jury trial and presentment or indictment by grand jury.

Kahn *v.* Anderson, 255 U. S. 1.

Rents act, being valid in its principal aspects, not to be held void because it might deprive landlords and tenants of trial by jury on right to possession.

Block *v.* Hirsh, 256 U. S. 135.

Arraignment and plea.—Due process of law requires that there shall be arraignment and plea on a charge of an infamous crime.

Crain *v.* U. S., 162 U. S. 625.

Method of impaneling jury.—Though a court does not exceed its jurisdiction in directing the impaneling of a jury by a method different from that prescribed by the State statute, yet in so doing "all rules of practice must necessarily be adapted to secure the rights of the accused; that is, where there is no statute the practice must not conflict with or abridge the right as it exists at common law."

Lewis *v.* U. S., 146 U. S. 377.

Imposing conditions on right to sue to recover taxes illegally collected.—Sections 3220, 3226, and 3227, Revised Statutes, requiring an appeal to the Commissioner of Internal Revenue after payment of a tax claimed to have been erroneously or illegally assessed and collected, as a condition to the right to sue for its recovery upon his refusal to return the sum paid, does not deny due process of law.

Dodge *v.* Osborn, 240 U. S. 118.

Under military law.—To those in the military or naval service of the United States the military law is due process.

Reaves *v.* Ainsworth, 219 U. S. 296.
Miller *v.* U. S., 11 Wall. 268.
Ex parte Reed, 100 U. S. 21.
Ochoa *v.* Hernandez, 230 U. S. 139.
Creary *v.* Weeks, 259 U. S. 336.

Notice and opportunity to be heard[1]—*In assessments for local improvements.*—An act of Congress having provided that assessments be levied for laying water mains in the District of Columbia should be at a certain rate per lineal foot against all lands abutting upon the street in which the water main should be laid, such act was held conclusive alike of the question of the necessity of the work and of the benefits as against abutting property.

In Parsons *v.* D. C. (170 U. S. 52) the court said:

Where the legislature has submitted these questions for inquiry to a commissioner, or to official persons to be appointed under municipal ordinances or regulations, the inquiry becomes in its nature judicial in such a

[1] See same subject under fourteenth amendment, pp. 702 and 715.

sense that the property owner is entitled to a hearing, or to notice or an opportunity to be heard.

See also—

Wight *v.* Davidson, 181 U. S. 381.
Bauman *v.* Ross, 167 U. S. 590.
Martin *v.* D. C., 205 U. S. 135.

Judgment against sureties without notice.—A person may contract to be bound by a judgment in which he has no right to be heard, and a statute authorizing judgment against the sureties of an appeal bond, as well as against the appellants, is valid.

Beall *v.* New Mexico, 16 Wall. 535.

See also—

United Surety Co. *v.* American Fruit Co., 238 U. S. 140.

Voluntary proceedings in bankruptcy without notice to creditors.—The provision in the bankruptcy act as to voluntary proceedings are not in violation of this amendment. Proceedings in bankruptcy are in the nature of proceedings *in rem*, and if such notice to those who may be interested in opposing the discharge as the nature of the proceeding admits is provided to be given, that is sufficient.

Hanover Nat. Bank *v.* Moyses, 186 U. S. 190.

Commitment for contempt in bankruptcy proceedings having been ordered after notice of hearing, opportunity to be heard, and a finding on the facts after such hearing, such order was made by due process of law.

U. S. *v.* Moore, 287 Fed. 879.

Right to be heard in proceedings by agents of the Government.—Due process of law is not denied when an opportunity is not given to be heard on questions to be settled, not by a judicial proceeding, but by the action of the agents of the Government.

Buttfield *v.* Stranahan, 192 U. S. 497.

Removal of Indian from tribal council.—An act of Congress vesting the Secretary of the Interior with the power and discretion to remove a member of the Osage Indian tribal council without the necessity of giving notice or affording a hearing does not deny due process of law.

Brown *v.* Lane, 232 U. S. 598.

On striking Indians from freedmen rolls.—Where under the provisions of acts of Congress and after a hearing the names of relators were duly entered as Creek freedmen by blood on the rolls made and approved by the Secretary of the Interior, rights were acquired of which the freedmen could not be deprived without that character of notice and opportunity to be heard essential to due process of law. Notice to the attorney of such freedmen, given a few hours before the hearing of a motion to strike their names on the ground that their enrollment had been secured by perjury, was not such notice as afforded due process.

Garfield *v.* Goldsby, 211 U. S. 249.
Turner *v.* Fisher, 222 U. S. 204.

Proceedings not conclusive upon courts if fair investigation was prevented.

Kwock Jan Fat *v.* White, 253 U. S. 454.

Deprivation of Life and Liberty

Arrest and detention by order of War Department.—An arrest and detention under an order of the War Department, entitled "Persons discouraging enlistments to be arrested," was held to be in direct violation of this clause.

Ex parte Field, 5 Blatchf. (U. S.) 63.

Personal presence of defendant during trial.—A leading principle that pervades the entire law of criminal procedure is that, after indictment found, nothing shall be done in the absence of the prisoner. While this rule has at times and in the cases of misdemeanors been somewhat relaxed, yet in felonies it is not in the power of the prisoner, either by himself or his counsel, to waive the right to be personally present during the trial.

Lewis *v.* U. S., 146 U. S. 372.
Hopt *v.* Utah, 110 U. S. 579.
Dowdell *v.* U. S., 221 U. S. 325.
But see—
Diaz *v.* U. S., 223 U. S., 442 as to waiver by voluntary absence.

Deportation, exclusion, and naturalization proceedings.—The deportation of an anarchist alien who is found to be here in violation of the law is not a deprivation of liberty without due process of law.

Turner *v.* Williams, 194 U. S. 290.
Japanese Immigrant Case, 189 U. S. 86.
See also—
Fong Yue Ting *v.* U. S., 149 U. S. 698, as to deportation of Chinese laborers.

The act of March 3, 1891 (chapter 551), which provided for the exclusion from admission into the United States of certain classes of aliens, and that the decision by the inspectors of immigration adverse to the right of any alien to land should be conclusive unless appeal was taken to the superintendent of immigration, whose action was subject to review by the Secretary of the Treasury, held constitutional.

Nishimura Ekiu *v.* U. S., 142 U. S. 651.

Departmental regulations which prevent communication between the parties and others and provide for an examination in private with only the Government officers and such witnesses present as are designated do not violate this amendment.

U. S. *v.* Sing Tuck, 194 U. S. 161.
See also—
U. S. *v.* Ju Toy, 198 U. S. 253.
Low Wah Suey *v.* Backus, 225 U. S. 460.
Zakonaite *v.* Wolf, 226 U. S. 272.
Luria *v.* U. S., 231 U. S. 9.
Scott *v.* Sandford, 19 How. 393.
Mahler *v.* Eby, 264 U. S. 32.
Tisi *v.* Tod, 264 U. S. 131.
Mensevich *v.* Tod, 264 U. S. 134.

Act of March 3, 1903, prohibiting the admission of aliens afflicted with a loathsome or with a dangerous contagious disease held not wanting in due process of law.

Oceanic Steam Nav. Co. *v.* Stranahan, 214 U. S. 320.

The act of Congress of May 5, 1892, section 3, providing "that any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States, unless such person shall establish by affirmative proof to the satisfaction of such justice, judge, or commissioner his lawful right to remain in the United States," was held to be valid as being within the power of a legislature to prescribe the evidence which shall be received and the effect of that evidence in the courts of its own Government.

Li Sing *v.* U. S., 180 U. S. 493.

In U. S. *v.* Dunton, 288 Fed. 959, it was held that proceeding to exclude Chinese, without presence of friends or relatives, is without due process of law.

In Ng Fung Ho *v.* White (259 U. S. 276) it was held that deportation without judicial proceedings of resident claiming citizenship denies due process of law.

The provision in the Chinese exclusion act providing for imprisonment at hard labor, to be undergone before the sentence of deportation is carried into effect, and that such imprisonment was to be adjudged against the accused by a justice, judge, or commissioner, upon a summary hearing, was held to be unconstitutional.

Wong Wing *v.* U. S., 163 U. S. 228.

Congress may authorize the deportation of aliens from the Philippine Islands and may ratify the acts of the Governor General excluding aliens, and the Philippine bill of rights does not prevent this.

Tiaco *v.* Forbes, 228 U. S. 549.

See also—

Sui *v.* McCoy, 239 U. S. 139, as to the refusal of entry of a Chinaman into the Philippine Islands.

Right of appeal.—The right of appeal is not essential to due process of law.

U. S. *v.* Heinze, 218 U. S. 532.

Relation of employer and employee.[1]—Act of Congress of June 1, 1898 (chap. 370, 30 Stat. L. 424), making it a criminal offense against the United States for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization, is an invasion of the personal liberty, as well as the right of property, guaranteed by this amendment.

[1] See same subject, pp. 657, 683, and 735.

Amend. 5.—Rights of Persons—Due Process.

Adair *v.* U. S., 208 U. S. 161.
See also—
American Foundries *v.* Tri-City Council, 257 U. S. 184, as to picketing in labor disputes.

Act of Congress making it unlawful to pay any seaman wages in advance, making such payment a misdemeanor, and in terms providing that such payment shall not absolve the vessel or its master or owner for full payment of wages after the same shall have been actually earned, is not invalid as invading the liberty of contract which is guaranteed by this amendment.

Patterson *v.* Eudora, 190 U. S. 173.
See also—
Second Employers' Liability Cases, 223 U. S. 1, and
Philadelphia, etc., R. Co. *v.* Schubert, 224 U. S. 603, abrogating contracts between railroad companies and their employees as to liability for injuries.
For interpretation of acts of Congress limiting hours of service of employees, see—
Baltimore, etc., R. Co. *v.* I. C. C., 221 U. S. 612.
Wilson *v.* New, 243 U. S. 332.
Ellis *v.* U. S., 206 U. S. 246.
U. S. Garbish, 222 U. S. 257.
Missouri, etc., R. Co. *v.* U. S., 231 U. S. 112.

Act of Congress permitting injured seamen to elect between varying measures of redress and between different forms of action without according a corresponding right to their employers is not in conflict with this clause.

Panama R. R. Co. *v.* Johnson, 264 U. S. 375.

The minimum wage act of 1918, in assuming to authorize the fixing of minimum wage standards for adult women in the District of Columbia, was declared in Adkins *v.* Children's Hospital (261 U. S. 525) to be an unconstitutional interference with the liberty of contract.

Contracts in violation of the Constitution.—The scope of the provision regarding the liberty of the citizen can not be so enlarged as to hold that it includes a right to make a contract which in fact restrained interstate commerce.

Addyston Pipe, etc., Co. *v.* U. S., 175 U. S. 229.
Chattanooga Foundry *v.* Atlanta, 203 U. S. 390.

Prohibiting gift-enterprise business.—Act of Congress, section 1177, Revised Statutes, relating to the District of Columbia, prohibiting any person from engaging in the gift-enterprise business, is not a deprivation of liberty or property.

In re Gregory, 219 U. S. 210.

Limiting compensation of pension agents and attorneys.—Act of Congress of June 27, 1890, limiting compensation of pension agents and attorneys, was held to be not unconstitutional as interfering with the price of labor and the freedom of contract.

Frisbie *v.* U. S., 157 U. S. 165.

Restraining importation of particular goods.—A statute which restrains the introduction of particular goods into the United

States, from considerations of public policy does not violate the due-process clause.

Buttfield *v.* Stranahan, 192 U. S. 493.

Deprivation of Property

Power of taxation.—This clause is not a limitation upon the taxing power conferred upon Congress by the Constitution.

Brushaber *v.* Union Pac. R. Co., 240 U. S. 1.

Income tax.—The income-tax provisions of act of October 3, 1913, do not deprive a corporation of property without due process of law because of the progressive increase as to individuals nor because of deductions and exemptions allowed to individuals and not to corporations.

Stanton *v.* Baltic Min. Co., 240 U. S. 103.

Corporation tax.—The section of the tariff act of August 5, 1909, known as the corporation tax law does not deprive a corporation of property without due process of law.

Flint *v.* Stone Tracy Co., 220 U. S. 107.

Excess-profits tax.—Unequal results to different corporations from basing "invested capital" upon actual costs to the exclusion of higher estimated values not arbitrary discrimination.

LaBelle Iron Works *v.* U. S., 256 U. S. 377.

Tax on foreign-built pleasure boats.—The provisions of section 37 of the tariff act of August 5, 1909, chapter 6, imposing a tax upon the use of every foreign-built yacht, pleasure boat, or vessel, not used or intended to be used for trade, does not violate this amendment.

Rainey *v.* U. S., 232 U. S. 310.
Billings *v.* U. S., 232 U. S. 261.
U. S. *v.* Bennett, 232 U. S. 299.

Repealing vested exemption from taxation.—Where Congress, by treaty or statute, provided that Indian lands distributed and allotted to the members of the tribe "shall be nontaxable while the title remains in the original allottee," a vested right of exemption attaches which can not be repealed.

Choate *v.* Trapp, 224 U. S. 665.
English *v.* Richardson, 224 U. S. 680.

Destruction of business.—A license tax, otherwise valid, is not unconstitutional because it destroys a business without compensation.

Alaska Fish Co. *v.* Smith, 255 U. S. 44.

Distraint for payments of taxes.—Distraint of real as well as personal property for the payment of taxes does not deprive the taxpayer of property without due process of law.

Springer *v.* U. S., 102 U. S. 593.

Ratifying collection of illegal tariff duties.—Act of Congress of June 30, 1906, which ratified the collection of the duties levied in the Philippine Islands under the order of the President, was held not to deprive the importer of property without due proc-

ess of law, even as applied to a pending suit for the recovery from the United States of the duties illegally collected.

U. S. *v.* Heinszen, 206 U. S. 370.

Assessments for local improvements.[1]—Act of Congress ordering the opening and extension of streets in the District of Columbia and directing the Commissioners of the District to condemn the necessary land was constitutional in providing that of the amount found due and awarded as damages not less than one-half should be assessed against the property lying on each side of the extension of said streets.

Wight *v.* Davidson, 181 U. S. 381.

When the assessment on property for a public improvement exceeds the benefit, sufficiently substantial to be estimated, there is an invasion of a constitutional right.

Martin *v.* D. C., 205 U. S. 135.
Briscoe *v.* D. C., 221 U. S. 547.

Assessments for a public park.—Act of Congress authorizing the establishment of a public park in the District of Columbia does not deprive the property owners of property without due process of law by providing for an assessment of adjacent lands for the cost and expenses of locating and improving the park, though the act dedicates and sets apart the park "for the benefit and enjoyment of the people of the United States."

Wilson *v.* Lambert, 168 U. S. 611.

Territorial taxation of nonresidents.—Alaska annual poll and license taxes on nonresident fishermen, held not invalid as applied to citizens of California temporarily engaged in fishing in Territory.

Haavik *v.* Alaska Packers' Assn., 263 U. S. 510.

Taking property on forfeiture.—To assert that those who are in possession are intruders upon the land and have forfeited their property, and therefore are not entitled to be heard upon the question whether those who claim the property have complied with the law, is to say that one in possession and claiming to be the owner may be deprived of his property without due process of law. On the contrary, he is entitled to insist upon obedience to law by those who assume to take his property by reason of an alleged forfeiture. To insist upon a forfeiture the person who claims it must show some legal right to insist upon it.

Walker *v.* McLoud, 204 U. S. 309.

Property used to defraud United States of tax.—Under Revised Statutes section 3450, an automobile so used by person who had it on credit from the owner is subject to forfeiture, although the owner was without notice of the forbidden use; so construed, the statute does not violate this amendment.

Goldsmith-Grant Co. *v.* U. S., 254 U. S. 505.

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[1] See also "Notice and opportunity to be heard," p. 595.

Amend. 5.—Rights of Persons—Due Process.

Enemy property.—Seizure, under trading with enemy act, without judicial determination of enemy ownership does not violate right of owner, if a citizen, since act provides for suit to compel return if property is wrongfully sequestered.

Stoehr *v.* Wallace, 255 U. S. 239.
Miller *v.* Kaliwerke, etc., 283 Fed. 746.
U. S. *v.* Chemical Foundation, 294 Fed. 300.

Regulating railroads[1]—*Railroad rates.*—When the Interstate Commerce Commission has established railroad rates, a reviewing court will confine itself to the ultimate question as to whether the commission acted within its power. The court will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. Consequently, an order of the commission will not be disturbed when no mistake of law was made and when there was evidence to support the finding of the commission that the rate fixed was reasonable.

I. C. C. *v.* Union Pac. R. Co., 222 U. S. 541.
See also—
St. Louis, etc., R. Co. *v.* U. S., 245 U. S. 136.
Manufacturers' R. Co. *v.* U. S., 246 U. S. 457.

Rate-making is not a function of the courts; their duty is to examine results and uphold the guaranties which inhibit the taking under any guise of private property for public use without just compensation.

Pacific Gas Co. *v.* San Francisco, 265 U. S. 404.

Reconsignment charges.—Where the interest shown by a group of lumber manufacturers in attacking an order of the Interstate Commerce Commission, which abolished a penalty charge on lumber held at reconsignment points, was in the handicap which the charge imposed on competing jobbers, held, that they had no standing to sue to set the order aside on the grounds that it exceeded the power of the commission and violated the rights of carriers under this amendment.

Edward Hines Trustees *v.* U. S., 263 U. S. 143.

Distribution of coal cars.—A rule fixing the number of cars distributable to coal mines in proportion to the daily capacity of each to produce, held not arbitrary, unreasonable, or violative of due process, as applied to mines served by more than one carrier.

United States *v.* New River Co., 265 U. S. 533.

Abrogating railroad passes granted for life.—Act of Congress of June 29, 1906 (being an amendment to the act to regulate commerce), providing that no common carrier should issue or give any interstate free ticket, is not invalid as depriving persons of their liberty to contract as applied to the case of an agreement made many years previously to issue free passes for life in compromise of a claim for damages for injuries.

Louisville, etc., R. Co. *v.* Mottley, 219 U. S. 467.

[1] See also commerce clause, p. 83.

Amend. 5.—Rights of Persons—Due Process.

Commodities clause.—Act of Congress known as the commodities clause of the act to regulate commerce, which makes it unlawful "for any railroad company to transport (interstate) any article * * * it may own * * * or in which it may have any interest * * * except such as may be necessary * * * for its use in the conduct of its business," is valid as to a railroad company owning mines and transporting hay to the mines for feeding live stock.

Delaware, etc., R. Co. *v.* U. S., 231 U. S. 363.

Railroad to provide sinking fund to meet debts.—A railroad corporation created by an act of Congress, and occupying a position of debtor to the United States, is not deprived of property without due process of law by a statute which requires the company, in the management of its affairs, to set aside a portion of its current income as a sinking fund to meet the Government and other mortgage debts as they mature.

Sinking-Fund Cases, 99 U. S. 719.

Land grants.—Vested rights of railroads in congressional land grants were not disregarded without due process of law by act June 9, 1916, revesting title in United States to unsold lands not used by railroads and regulating distribution of such lands.

Oregon, etc., R. Co. *v.* U. S., 243 U. S. 549.
Santa Fe, etc., R. Co. *v.* Lane, 244 U. S. 492.

Requiring railroad to pay cost of survey of public land grant.—Where a land grant was made in aid of a proposed railroad under a statute declaring it to be subject to addition, alteration, amendment, or repeal by Congress, and that the grant was made upon the conditions that not less than 50 miles of road be completed during each year after commencement, and the railroad failed to proceed with the construction at the rate prescribed, a subsequent statute requiring the grantee to pay for the survey of the granted lands and directing this to be done in advance of the issue of the patents, is not repugnant to the due process clause.

Santa Fe Pac. R. Co. *v.* Lane, 244 U. S. 492.

Railroad property.—A railroad's right of way has the substantiality of the fee and is private property and can not be appropriated except upon payment of compensation.

Western Union *v.* Pennsylvania R. Co., 195 U. S. 540.

In Wilson *v.* New (243 U. S. 332) it was held that the so-called Adamson law, establishing an eight-hour day and minimum wages for employees of interstate railroads, was not repugnant to this clause.

A car company whose business consists in leasing its refrigerator cars to railroads on a car-mile basis, and which solicits freight, but which does not control or use the facilities neces-

sary for performing carriage, or hold itself out to perform carriage by publishing rates therefor, or receive compensation from shippers whose shipments move in its cars, is not a "carrier by railroad," within the meaning of section 209 of the transportation act, 1920, which made a guaranty of income for six months after March 1, 1920, with respect to any carrier by railroad with which a contract had been made fixing the amount of just compensation under the Federal control act.

Chicago Refrigerator Co. *v.* I. C. C., 265 U. S. 292.

Connecting carriers.—The Carmack amendment to the act to regulate commerce holding the initial carrier engaged in interstate commerce as having contracted for through carriage to the point of destination, and liable to the shipper for loss of or injury to property on a connecting line, does not deprive the initial carrier of its liberty or property without due process of law.

Atlantic Coast Line *v.* Riverside Mills, 219 U. S. 186.

An order of the Interstate Commerce Commission requiring a railroad company to give to one connecting carrier the same transportation facilities over its terminals that it gives to another connecting carrier, under the same circumstances of connection does not deprive it of any property right without due process of law.

Pennsylvania Co. *v.* U. S., 236 U. S. 351.
Louisville, etc., R. Co. *v.* U. S., 238 U. S. 1.
See also—
Wilson *v.* New, 243 U. S., 332, as to eight-hour day for railroad employees.

Jurisdiction of Public Utilities Commission of District of Columbia over public utilities under act March 4, 1913, section 8, can not be defeated because such jurisdiction has not been assumed over other similar concerns.

Terminal Taxicab Co. *v.* D. C., 241 U. S. 252.

Prohibiting trunk line allowing rebate to tap line.—An order of the Interstate Commerce Commission prohibiting trunk line carriers from making to any tap line an allowance or division out of the joint rates in excess of the maximum amounts prescribed does not deprive a trunk line of its property without due process of law, as a trunk line has no constitutional right to compete and build up its business by paying bonuses or rebates that have been forbidden by act of Congress.

O'Keefe *v.* U. S., 240 U. S. 294.

Railroad Labor Board.—Act providing for Federal Labor Board held not in contravention of this clause.

Pennsylvania R. Co. *v.* Labor Board, 282 Fed. 693.

Divisions of joint rates.—Where joint rates among a group of carriers were increased by the commission with special reference to the financial necessities of a part of them, a division which gave the needy carriers a relatively greater share, but left the

share of the others adequate to avoid a confiscatory result, did not deprive them of their property without due process of law.

New England Divisions Case, 261 U. S. 184.
U. S. *v.* Illinois Cent. R. R., 263 U. S. 515.

Recapture of excess income.—In Dayton-Goose Creek Ry. *v.* U. S. (263 U. S. 456) it was held that the provisions in the transportation act of 1920 for recapture and use of railroad income in excess of a certain percentage do not violate the due process clause of this amendment.

Issuance of stocks and bonds.—Act requiring carrier to obtain permission before issuing stocks and bonds held not to deny due process.

Pittsburgh & W. V. Ry. *v.* I. C. C., 293 Fed. 1001.

Gas companies.—Order raising rates chargeable to private consumers without changing lower rate fixed by Congress for gas furnished the Government and the District does not discriminate against private consumers or take their property without due process.

Hollis *v.* Kutz, 255 U. S. 452.

Food and drugs.—Food control act of August 10, 1917, as amended October 22, 1919, penalizing the making of sales of necessaries at unreasonable prices, sets up no ascertainable standard of guilt and is therefore invalid.

U. S. *v.* Cohen Grocery Co., 255 U. S. 81.

Act of August 23, 1912, which declares that "If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein, which is false and fraudulent," is not so uncertain in its operation as to deny due process of law in its enforcement.

Seven Cases *v.* U. S., 239 U. S. 510.

Intoxicating liquors.[1]—Act of Congress of March 1, 1913, known as the Webb-Kenyon law, divesting intoxicating liquors of their interstate character in certain cases, is not repugnant to the due-process clause.

Clark Distilling Co. *v.* Western Maryland R. Co., 242 U. S. 326.
See also—
Hamilton *v.* Kentucky Distilleries Co., 251 U. S. 146, as to war-time prohibition.
Ruppert *v.* Caffey, 251 U. S. 264, as to the Volstead Act.
Amos *v.* U. S., 255 U. S. 313, as to taking of illicit whisky by revenue agents without search warrant.

War-time prohibition did not result in deprivation of property without due process of law.

Dryfoos *v.* Edwards, 284 Fed. 596.

Dealers in beer, ale, and stout who were prevented by the supplemental prohibition act from disposing of stocks acquired

[1] See also same subject, pp. 685, 734, and 747.

before it was passed were not thereby deprived of property without due process of law in violation of this amendment.

Everard's Breweries *v.* Day, 265 U. S. 545.

Validating registration of mortgages as against judgment creditors.—An act validating the registration of mortgages of personal property is not a deprivation of property without due process of law as against creditors who had obtained judgments and had sued out attachments prior to the enactment of the statute.

McFaddin *v.* Evans-Snider-Buel Co., 185 U. S. 513.

Deprivation of use of the Postal Service.—Due process of law is not denied when the disposition of property is affected by the order of an executive department and a statute authorizing the Postmaster General to seize or return to sender all letters addressed to a particular person, firm, or corporation which he is satisfied is making use of the mail for an illegal purpose.

Public Clearing House *v.* Coyne, 194 U. S. 508; but see Hoover *v.* McChesney, 81 Fed. 481, to the contrary.

Statute of limitations.—May be modified by shortening the time prescribed, but only if this is done while the time is still running, and so that a reasonable time still remains for the commencement of an action before the bar takes effect.

Ochoa *v.* Hernandez, 230 U. S. 139.
Montoya *v.* Gonzales, 232 U. S. 375.

Giving unwarranted effect to decision of State court.—A judgment of the circuit court of the United States claiming to give such unwarranted effect to a decision of a State court as to wrongfully deprive a party of his property may be considered as presenting a question of how far it can be sustained in view of the prohibitory language of this clause.

Fayerweather *v.* Ritch, 195 U. S. 298.

Inspection of mining claim to ascertain interest.—A Territorial statute providing that whenever any person shall have any right to or interest in any mining claim which is in the possession of another person, and it shall be necessary to the ascertainment of such right that an inspection of the mining claim shall be made, does not deprive anyone of property without due process of law.

Montana Co. *v.* St. Louis Min., etc., Co., 152 U. S. 162.

Right to practice law.—A summary proceeding against an attorney to exclude him from the practice of his profession on account of acts for which he may be indicted and tried by a jury is not a violation of this amendment when due notice was given and a trial and hearing was had before the court in the manner in which proceedings against attorneys, when the question is whether they shall be struck off the roll, are always conducted.

Ex parte Wall., 107 U. S. 288.

Amend. 5.—Right of Persons—Due Process.

Prohibiting disposition or encumbrance of community property.—In a Territory in which the rule of community property as between husband and wife obtains, a statute providing that "neither husband nor wife shall convey, mortgage, encumber, or dispose of any real estate or legal or equitable interest therein * * * unless both join in the execution thereof," does not deprive a husband of property rights without due process of law.

Arnett *v.* Reade, 220 U. S. 311.

Requiring property in District of Columbia to be connected with drainage.—Act of Congress requiring improvements of property within the District of Columbia to be connected with the city sewage system does not deprive an owner of property of any rights without due process of law, though it does not appear that any nuisance existed on the property or that the means of drainage already there were unsatisfactory or insufficient.

D. C. *v.* Brooke, 214 U. S. 138.

Regulation of rents.—District of Columbia rents act of Congress of October 22, 1919, held not unconstitutional as depriving owners of property without due process of law.

Block *v.* Hirsh, 256 U. S. 135.
Marcus Brown Co. *v.* Feldman, 256 U. S. 170.
Chastleton *v.* Sinclair, 264 U. S. 543.

Zoning ordinance held invalid as depriving owners of their property without due process of law.

Ambler Realty Co. *v.* Euclid, 297 Fed. 307.

Taking of Private Property

Power of Eminent Domain

In general.—This clause contains an implied recognition of the right of eminent domain beyond what may justly be implied from the express grants of power.

Kohl *v.* U. S., 91 U. S. 372.

The right of eminent domain does not rest on a statute or on a constitutional enactment.

In re Rugheimer, 36 Fed. 369.
Shoemaker *v.* U. S., 147 U. S. 298.

Land for lighthouse.—Act of Congress authorizing the Secretary of the Treasury to acquire land for the purpose of a lighthouse by condemnation under judicial process in a court of the United States is a constitutional exercise of the power of Congress.

Chappell *v.* U. S., 160 U. S. 511.
Harris *v.* Elliott, 10 Pet. 25.
Cherokee Nation *v.* Kansas R. Co., 135 U. S. 641.
Monongahela Nav. Co. *v.* U. S., 148 U. S. 312.

Land for use of Emergency Fleet Corporation.—The act of March 1, 1918, authorized the taking of land for an electric railway terminal for the purpose of providing convenient transportation

for employees of a near-by shipyard for whom houses were being provided under the act.

Manufacturers' Co. *v.* Fleet Corp., 264 U. S. 250.

This clause a mere limitation on the power.—The right of eminent domain is an incident of sovereignty and requires no constitutional recognition. This clause, providing for just compensation for property taken, is merely a limitation upon the use of the power.

U. S. *v.* Jones, 109 U. S. 518.
Alabama Power Co. *v.* Gulf Power Co., 283 Fed. 606.

With or without concurrent act of the State.—The United States, at the discretion of Congress, may acquire and hold real property in any State, and it may be taken against the will of the owners by the United States, in the exercise of the power of eminent domain, upon making just compensation, with or without a concurrent act of the State in which the land is situated.

Van Brocklin *v.* Tennessee, 117 U. S. 154.
Luxton *v.* North River Brdg. Co., 153 U. S. 529.
Ft. Leavenworth R. Co. *v.* Lowe, 114 U. S. 531.

Private Property

Franchises.—When Congress, under its power to regulate commerce, condemns and appropriates a lock and dam belonging to a navigation company, its action does not destroy the State franchise, and just compensation requires payment for the franchise to take tolls as well as for the value of the tangible property.

Monongahela Nav. Co. *v.* U. S., 148 U. S. 312.
Louisville Brdg. Co. *v.* U. S., 242 U. S. 409.

The franchise of a private corporation is property which can not to be taken for public use without compensation.

Wilmington etc., R. Co. *v.* Reid, 13 Wall. 264.

Indian allotments.—A Creek homestead allottee under an agreement incorporated in congressional legislation by which, in consideration of relinquishment by Indians of their claim to tribal property, they were to receive nontaxable homestead allotments inalienable for a specified period, acquired a vested right to exemption from State taxation, protected by the Federal Constitution against abrogation by Congress.

English *v.* Richardson, 224 U. S. 680.
See also—
U. S. *v.* Rowell, 243 U. S. 464, as to recall of patent.

Pensions.—Pensioners of the United States have no vested legal rights to their pensions, and it was competent for Congress by act July 25, 1882, to provide that no person receiving a pension under a special act should receive in addition a pension under the general law.

U. S. *v.* Teller, 107 U. S. 64.
See also—
Calhoun *v.* Massie, 253 U. S. 170, and Newman *v.* Moyers, 253 U. S. 182, as to compensation to pension agents.

Amend. 5.—Rights of Persons—Private Property.

Right to public office.—Congress could, by act April 12, 1900, confiscate without compensation, so far as the Federal Constitution is concerned, the office of solicitor of the courts of first instance of the capital of Porto Rico, lawfully purchased in perpetuity, prior to the occupation of Porto Rico by the military authorities of the United States and the cession of that island to the United States.

Sanchez *v.* U. S., 216 U. S. 167.

Riparian rights.—Lands sold by the United States with no reservation, though bordering on a navigable stream, are within the protection of the constitutional principle awarding compensation.

Pumpelly *v.* Green Bay, etc., Co., 13 Wall. 176.

The erection by the United States of a pier on submerged land under navigable water, the title to which was owned by the riparian proprietor, when this was done merely to improve navigation, though it permanently destroyed his access to the navigable waters, did not entitle him to compensation, since his title was acquired subject to the rights of the public in the navigation of such waters.

Scranton *v.* Wheeler, 179 U. S. 141.
U. S. *v.* Chandler-Dunbar, etc., Co., 229 U. S. 53.
Greenleaf-Johnson Lbr. Co. *v.* Garrison, 237 U. S. 251.
Willink *v.* U. S., 240 U. S. 572.
Cubbins *v.* Mississippi, 241 U. S. 351.
U. S. *v.* Cress, 243 U. S. 316.

Contract rights.—A valuable contract right is property within the meaning of this amendment, and when taken for public use must be paid for by the Government.

Omnia Co. *v.* U. S., 261 U. S. 502.

The taking must be authorized.—A contractor with the United States is bound to perform the contract in accordance with the laws and without disregarding the property of others, and is vested with no power to take the property of others.

Cramp & Sons, etc., Co. v. International, etc., Turbine Co., 246 U. S. 28.

What Constitutes a Taking

In general.—Taking property for public use is where the land or other property of an individual is taken from him for the use of the Government or public, and where, if the property were not paid for, the burden would fall chiefly upon the persons whose property is taken and not upon the public generally; in such case payment must be made to prevent inequality.

Michigan Cent. R. Co. *v.* Slack, 17 Fed. Cas. No. 9527a, affirmed in Railroad Co. v. Collector, 100 U. S. 595.

Distinction between damage and taking.—The distinction between damage and taking must be observed in applying this constitutional provision.

Bedford *v.* U. S., 192 U. S. 224.

Decreased value of property on taking part.—Where, on the taking of a strip of land across a farm, a private right of way, which was the only practical outlet from the farm to the county road, was closed and the value of the farm thereby lessened, the owner is not only entitled to compensation for the strip of land but also for the decreased value of the farm consequent on the closing of his private right of way.

U. S. *v.* Welch, 217 U. S. 333.

Effect of regulation on value of membership in grain exchange.—Regulation, by grain futures act, requiring grain exchange to admit representatives of producers as members and forbidding any rule against return to producers of commissions earned by representatives, does not deprive exchange members of property without due process, though the value of the memberships is diminished.

Chicago Board of Trade *v.* Olsen, 262 U. S. 1.

Extent of taking rests in legislative discretion.—The extent to which private property shall be taken for public use rests wholly in the legislative discretion, subject only to the restraint that just compensation must be made.

Shoemaker *v.* U. S., 147 U. S. 298.

Fee passes to the Government.—When the Government, by the construction of public works, so floods lands as to substantially destroy their value, resulting in a taking within the scope of this provision, the proceeding must be regarded as an actual appropriation of the lands, including the fee; and when the amount awarded as compensation is paid, the title, the fee, and whatever rights may attach thereto—in this case those at least which belong to a riparian proprietor—pass to the Government.

U. S. *v.* Lynah, 188 U. S. 470.

But it must be remembered that to bind the Government there must be implication of a contract to pay.

Horstmann Co. *v.* U. S., 257 U. S. 138, distinguishing the Lynah Case, *supra.*

See also—

Kern River Co. *v.* U. S., 257 U. S. 147.

Value of real estate destroyed or impaired.—Where real estate is actually invaded by superinduced addition of water, earth, sand, or other material, or by having any other artificial structure placed upon it so as to destroy or impair its usefulness, it is a taking within the meaning of this clause.

Pumpelly *v.* Green Bay, etc., Canal Co., 13 Wall. 181.

When merely incidental to exercise of a servitude.—Riparian ownership is subject to the obligation to suffer the consequences of the improvement of navigation in the exercise of the dominant right of the Government in that regard. When damage results from the prosecution of an improvement of a navigable river, for the public good, it is not a taking of property, but is merely

incidental to the exercise of a servitude to which it is always subject.

Gibson *v.* U. S., 166 U. S. 271.
Bedford *v.* U. S., 192 U. S. 223.
Jackson *v.* U. S., 230 U. S. 1.
Hughes *v.* U. S., 230 U. S. 24.
Sanguinetti *v.* U. S., 264 U. S. 146.

Diverting water of nonnavigable stream.—Where the Government diverts the waters of a nonnavigable stream, to the injury of the owner of the land thereon, and this is done not for the benefit or improvement of that stream but for the improvement of navigable waters in another and different locality, this is a taking of private property for which the owner is entitled to compensation.

Cohen *v.* U. S., 162 Fed. 364.

Firing over land in naval target practice.—The maintenance of a battery in such position that on being fired the missiles will pass over land on an island does not constitute a taking of property when only three guns were fired some years before, and it does not appear that there is any intention on the part of the Government to fire any of the guns in time of peace over the lands so as to deprive the owner of the use of them.

Peabody *v.* U. S., 231 U. S. 530.
Portsmouth Harbor Land, etc., Co. *v.* U. S., 250 U. S. 1.

Removal or alteration of bridge as an obstruction to navigation.—Such removals or alterations of bridges over the navigable waters of the United States as the Secretary of War may require to be made after notice and hearing the parties interested, under authority of an act of Congress, to abate obstructions to navigation is not a taking of the property of the owners of such bridges within the meaning of the Constitution.

Hannibal Brdg. Co. *v.* U. S., 221 U. S. 194.
Union Brdg. Co. *v.* U. S., 204 U. S. 364.
Louisville Brdg. Co. *v.* U. S., 242 U. S. 409.
Bridge Co. *v.* U. S., 105 U. S. 481.

Destruction of oyster bed by dredging.—Where submerged land under the navigable waters of a bay is planted with oysters, the action of the Government in dredging a channel across the bay in such a way as to destroy the oysters is not a "taking" of private property for which compensation can be required.

Lewis Blue Point, etc., Co. *v.* Briggs, 229 U. S. 82.

Conferring immunity from action for nuisance.—While Congress may legalize what otherwise would be a public nuisance, it may not confer immunity from action for a private nuisance of such a character as to amount in effect to a taking of private property for public use.

Richards *v.* Washington Term. Co., 233 U. S. 546.

Use of patented invention.—Letters patent for a new invention or discovery in the arts confer upon the patentee an exclusive property in the patented invention which can not be appro-

priated or used by the Government itself without just compensation, any more than it can appropriate or use without compensation land which had been patented to a private purchaser.

James *v.* Campbell, 104 U. S. 358.
Hollister *v.* Benedict, etc., Mfg. Co., 113 U. S. 67.

Destruction of well by blasting.—Where by reason of the construction of a tunnel to increase the water supply of the city of Washington a well on an adjoining tract of land was drained and destroyed, the owner was entitled to recover under the act of Congress authorizing the construction of the tunnel and providing for recovery under such conditions.

U. S. *v.* Alexander, 148 U. S. 186.

Confiscation of property of public enemy.—Property confiscated under an act of Congress as the property of a public enemy is not so taken as to give a right to recover its value under this clause.

U. S. *v.* Dunnington, 146 U. S. 344.

Consequential Injury

There is a distinction between the taking of property for public uses and a consequential injury to such property by reason of some public work. In the one class the law implies a contract, a promise to pay for the property taken, which, if the taking was by the General Government, will uphold an action in the Court of Claims, while in the other class there is simply a tortious act doing injury, over which the Court of Claims has no jurisdiction.

U. S. *v.* Lynah, 188 U. S. 472.
Horstmann Co. *v.* U. S., 257 U. S. 138.

When the Government for war purposes requisitioned the entire production of a steel manufacturer, rendering impossible and unlawful of performance an outstanding contract between the manufacturer and a customer, the customer's rights were not taken by the Government contrary to this amendment.

Omnia Co. *v.* U. S., 261 U. S. 502.

This provision refers only to a direct appropriation and not to consequential injuries resulting from the exercise of lawful power. It has never been supposed to have any bearing upon or to inhibit laws that indirectly work harm and loss to individuals.

Legal Tender Cases, 12 Wall. 457.

Without Just Compensation

Definition

The just compensation required by the Constitution to be made to the owner is to be measured by the loss occasioned to him by the appropriation. He is entitled to receive the value of what he has been deprived of, and no more.

Bauman v. Ross, 167 U. S. 574.
See also—
McCoy v. Union El. R. Co., 247 U. S. 354, as to special benefits to owner.

The value of the property to the Government for its particular use is not a criterion, but the owner is to be paid its fair market value for all available uses and purposes.

U. S. *v.* Chandler-Dunbar Co., 229 U. S. 53.
Brooks-Scanlon *v.* U. S., 265 U. S. 106.

Compensation by Substitution

Where establishment of a reservoir under the reclamation act involved flooding part of a town, the United States had constitutional power to take by condemnation other private land nearby, in the only practicable and available place, as a new town site to which the buildings affected could be moved at the expense of the United States and new lots be provided in full or part satisfaction for those flooded. Brown *v.* U. S. (263 U. S. 78), in which the court said:

> A method of compensation by substitution would seem to be the best means of making the parties whole. The power of condemnation is necessary to such a substitution.

Measure of Compensation a Judicial Question

The legislature may determine what private property is needed for public purposes—that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial.

Monongahela Nav. Co. *v.* U. S., 148 U. S. 327.
Seaboard Air Line Ry. *v.* U. S., 261 U. S. 299.
Vogelstein *v.* U. S., 262 U. S. 337.
U. S. *v.* Collieries Co., 262 U. S. 341.

Necessity for Making Compensation

The right to take private property for public uses can be exercised only on condition that just compensation is paid.

Garrison *v.* New York, 21 Wall. 196.
U. S. *v.* Lynah, 188 U. S. 445.
Cherokee Nation *v.* Southern Kansas R. Co., 135 U. S. 659.
Great Falls Mfg. Co. *v.* Atty. Gen., 124 U. S. 599.
U. S. *v.* Russell, 13 Wall. 629.
Mitchell *v.* Harmony, 13 How. 134.

The mere silence of Congress and its failure directly to interfere and prevent the original construction of a bridge erected under the sanction of a State, over an interstate waterway, imposes no constitutional obligation upon the United States to make compensation for subsequent changes or alterations which the public good in its judgment requires.

Monongahela Brdg. Co. *v.* U. S., 216 U. S. 177.
Kaukauna Water Power Co. *v.* Green Bay, etc., Canal Co., 142 U. S. 254.

Government Liable for Property Taken by Agents

When the United States, by its agents, proceeding under the authority of an act of Congress, take private property for public use they are under the obligation imposed by the Constitution to make compensation.

U. S. *v.* Great Falls Mfg. Co., 112 U. S. 656.

Amend. 5.—Rights of Persons—Private Property.

Tribunal to Determine Value of Property

The compensation to be made may be ascertained by any appropriate tribunal capable of estimating the value of the property. And whether the tribunal shall be created directly by an act of Congress or one already established by the State shall be adopted for the occasion is a mere matter of legislative discretion.

U. S. *v.* Jones, 109 U. S. 518.

The estimate of the just compensation for property taken for the public use under the right of eminent domain is not required to be made by a jury, but may be intrusted by Congress to commissioners appointed by a court or by the Executive, or to an inquest consisting of more or fewer men than an ordinary jury.

Bauman *v.* Ross, 167 U. S. 593.

Right of Ejectment on Failing to Make Compensation

This provision was intended to be enforced by the judiciary, and the Federal courts may take jurisdiction of an action in ejectment by a citizen against officers of the Government to recover property of which he has been deprived by force and which has been converted to the use of the Government without lawful authority, without due process of law, and without compensation.

U. S. *v.* Lee, 106 U. S. 220.

Error of the trial judge in admitting evidence or entering judgment after full hearing in ejectment action does not constitute a deprivation of property without due process of law.

Jones *v.* Buffalo, etc., Coke Co., 245 U. S. 328.

Amendment 6.[1]—CRIMINAL TRIALS.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Leading Cases

In Ex parte Milligan (4 Wall. 122) the court said:

The great minds of the country have differed on the correct interpretation to be given to various provisions of the Federal Constitution; and judicial decision has been often invoked to settle their true meaning; but until recently no one ever doubted that the right of trial by jury was fortified in the organic law against the power of attack. It is now assailed,

[1] See p. 25 for ratification.

but if ideas can be expressed in words, and language has any meaning, this right—one of the most valuable in a free country—is preserved to every one accused of crime who is not attached to the Army or Navy or militia in actual service. * * * The framers of the Constitution, doubtless, meant to limit the right of trial by jury in the sixth amendment to those persons who were subject to indictment or presentment in the fifth.[1]

Reynolds *v.* U. S., 98 U. S. 145, as to the meaning of "impartial jury."
Maxwell *v.* Dow, 176 U. S. 581, 586, as to composition of jury.
Burton *v.* U. S., 202 U. S. 344, as to the district in which the crime was committed.

In U. S. *v.* Cook (17 Wall. 174), the court held:

Offenses created by statute, as well as offenses at common law, must be accurately and clearly described in an indictment, and if they can not be, in any case, without an allegation that the accused is not within an exception contained in the statutes defining the offense, it is clear that no indictment founded upon the statute can be a good one which does not contain such an allegation, as it is universally true that no indictment is sufficient if it does not accurately and clearly allege all the ingredients of which the offense is composed.

See also—
Kirby *v.* U. S., 174 U. S. 47, as to dying declarations.

Scope

The prohibitions contained in the sixth amendment were designed to prevent interference with the rights of the States and their citizens, and are restrictive of the power of the Federal Government alone.

Barron *v.* Baltimore, 7 Pet. 243.
Fox *v.* Ohio, 5 How. 410.
Davis *v.* Texas, 139 U. S. 653.

In Case of Conflict with Article III, Section 2, Clause 3 [2]

If there be any conflict between this amendment and the third clause of section 2, Article III of the Constitution, the amendment must control "under the well-understood rule that the last expression of the will of the lawmaker prevails over an earlier one."

Schick *v.* U. S., 195 U. S. 68.

Limited to Trials in Federal Courts

In General

This amendment was intended to apply exclusively to the powers exercised by the Federal Government, whether by Congress or by the judiciary, and not as a limitation upon the powers of the States.

Eilenbecker *v.* Plymouth County, 134 U. S. 35.
See also—
Ughbanks *v.* Armstrong, 208 U. S. 481.
Howard *v.* Kentucky, 200 U. S. 164.
Lloyd *v.* Dollison, 194 U. S. 447.
West *v.* Louisiana, 194 U. S. 264.
Bolln *v.* Nebraska, 176 U. S. 87.
Brown *v.* New Jersey, 175 U. S. 174.

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[1] See Rules of Construction, p. 37.

[2] See p. 483.

Brown *v.* Walker, 161 U. S. 606.
Livingston *v.* Moore, 7 Pet. 551.
U. S. *v.* Dawson, 15 How. 487.
Twitchell *v.* Commonwealth, 7 Wall. 324.
Spies *v.* Illinois, 123 U. S. 131.
Brooks *v.* Missouri, 124 U. S. 397.
In re Sawyer, 124 U. S. 219.
McElvaine *v.* Brush, 142 U. S. 158.
Monongahela Nav. Co. *v.* U. S., 148 U. S. 324.

Courts of the District of Columbia and Territories

This amendment is applicable to trials in the courts of the District of Columbia and the Territories.

Capital Traction Co. *v.* Hof, 174 U. S. 5.
Reynolds *v.* U. S., 98 U. S. 145.
Lovato *v.* New Mexico, 242 U. S. 199.

Alaska

The treaty with Russia concerning Alaska made the Constitution applicable to that Territory, and the provision of section 171 of the Code for Alaska adopted by Congress (31 Stat. 358), wherein, among other things, it was provided "that hereafter in trials for misdemeanors six persons shall constitute a legal jury," was held repugnant to this amendment.

Rassmussen *v.* U. S., 197 U. S. 516.

Porto Rico

This amendment has no applicability to Porto Rico, the island not having been incorporated into the Union.

Balzac *v.* Porto Rico, 258 U. S. 298.

Consular Courts

Statutes giving consuls criminal jurisdiction are not invalid for not preserving to the accused person the right to be tried by jury.

In re Ross, 44 Fed. 185, affirmed in 140 U. S. 459.

In All Criminal Prosecutions

This amendment "relates to the prosecution of an accused person which is technically criminal in its nature."

U. S. *v.* Zucker, 161 U. S. 481.

An action to recover a penalty under an act of Congress is not a criminal prosecution.

Oceanic Steam Nav. Co. *v.* Stranahan, 214 U. S. 320.
Hepner *v.* U. S., 213 U. S. 103.

But when the statute declares the conduct denounced to be a misdemeanor the action for the penalty may be prosecuted either by indictment or by civil action.

U. S. *v.* Stevenson, 215 U. S. 199.

The framers of the Constitution doubtless meant to limit the right of trial by jury in the sixth amendment to those persons who were subject to indictment or presentment in the fifth.

Ex parte Milligan, 4 Wall. 123.

A person who violates an injunction is not entitled, under the Constitution, to a trial by jury. A court enforcing obedience for contempt is not executing the criminal laws but only securing to suitors the rights which it has adjudged them entitled to.

In re Debs, 158 U. S. 594.
Gompers *v.* U. S., 233 U. S. 604.
Myers *v.* U. S., 264 U. S. 95.

An action to recover a penalty for an alleged violation of the alien immigration act is a civil action and not governed by the criminal provisions of the Constitution. It is of no moment that the statute denominates the offense a misdemeanor, as that merely declares the Government's alternative right to prosecute as for a crime.

U. S. *v.* Regan, 232 U. S. 37.
See also—
Zakonaite *v.* Wolf, 226 U. S. 272, and Turner *v.* Williams, 194 U. S. 289, as to deportation of aliens.

In Wong Wing *v.* U. S. (163 U. S. 228) the act of Congress of May 5, 1892, providing for deportation of aliens illegally within the United States, was held repugnant to this amendment in that it did not specifically provide for a judicial trial.

Jury Trial

The jury referred to is a jury constituted, as it was at common law, of 12 men, but this requirement applies to prosecutions in the Federal courts alone; it does not guarantee trials by jury in the State courts, and so does not preclude a trial without a jury in a State court, or a trial with a jury of less than 12 men.

Thompson *v.* Utah, 170 U. S. 349.
In re Sawyer, 124 U. S. 200.
Brooks *v.* Missouri, 124 U. S. 397.
Callan *v.* Wilson, 127 U. S. 549.

If this clause has any application to the order of trials of different indictments it must relate to the time of trial and not to the place and does not prevent the removal of a defendant to another district for trial when another indictment has been found against him.

Beavers *v.* Haubert, 198 U. S. 86.

A person called as a juror testified that he believed that he had formed an opinion but had not expressed it; that the opinion was based upon evidence not produced in court, and that the opinion would not influence his verdict. Upon a challenge by the defendant, for cause, the court overruled the challenge and permitted him to be sworn as a juror.

Reynolds *v.* U. S., 98 U. S. 146.
Spies *v.* Illinois, 123 U. S. 131.
Queenan *v.* Oklahoma, 190 U. S. 548.

Right to jury trial was not denied because after demurrer to indictment had been overruled the jury was dismissed and accused required to plead, and same jury was sworn and trial proceeded.

Lovato *v.* New Mexico, 242 U. S. 199.

Socialists held denied no constitutional or statutory rights because trial jury was composed exclusively of members of other parties and of property owners.

Ruthenberg *v.* U. S., 245 U. S. 480.

This provision "distinctly means a criminal prosecution against a person who is accused and who is to be tried by a petit jury." A criminal prosecution under this amendment is much narrower than a "criminal case" under the Fifth Amendment.

Counselman *v.* Hitchcock, 142 U. S. 563.

District Wherein the Crime Shall Have Been Committed

Under the sixth amendment an accused can not be tried in one district under an indictment showing that the offense was committed in another district. Nor is there any authority for a removal to a district other than that in which the trial may constitutionally be had.

Salinger *v.* Loisel, 265 U. S. 224.

The locality in which an offense is charged to have been committed determines the place and court of trial.

Beavers *v.* Henkel, 194 U. S. 83.

On an indictment of a United States Senator for receiving or agreeing to receive compensation for services to be rendered in a proceeding before a department, in which it appeared that the tentative arrangement for services was made in Illinois subject to confirmation at St. Louis, Mo., and there subsequently confirmed, it was held that the defendant was properly tried at St. Louis.

Burton *v.* U. S., 202 U. S. 344.

In a prosecution for conspiracy, the place of trial can be any State and district where an overt act was performed.

Brown *v.* Elliott, 225 U. S. 392.
Hyde *v.* U. S., 225 U. S. 347.

Referring to Revised Statutes, section 1014, the court said:

> The section makes no discrimination based upon distance, and requires the commitment to be made for trial before the court having cognizance of the offense, wherever that court may sit. Where the statute contains no exception, the courts can not create one. Indeed, the Constitution itself requires that the trial of all crimes shall be held in the State where the crimes have been committed, and the power of Congress to order the surrender of accused persons from other States is a necessary complement of the duty of trying offenses in the jurisdiction where the crime was committed.

Hyde *v.* Shine, 199 U. S. 78.

A person charged with crime in a district other than that of his residence can not insist upon a right to be tried in the district of his residence, and has neither the legal nor constitutional right to object to removal to the district where the trial is to be had.

Haas *v.* Henkel, 216 U. S. 462.

Amend. 6.—Criminal Trials.

The second section of Article III provides, in respect to crimes committed in the States, that the trial by jury shall be had within the State where the crime was committed. This amendment adds the further guaranty, in respect to the place of trial, that the district shall have been previously ascertained by law, leaving the trial of offenses not committed within the State to be controlled by Article III, section 2. The requirements in the latter section is that the trial "shall be at such place or places as the Congress may by law have directed."

Cook *v.* U. S., 138 U. S. 181.
Lamar *v.* U. S., 241 U. S. 103.

The fact that the offense is committed on an American vessel does not give the offender when tried before a consular tribunal the right to invoke the constitutional guaranty of trial by jury on the ground that the deck of the vessel is territory of the United States.

In re Ross, 140 U. S. 453.

To Be Informed of the Nature and Cause of the Accusation

Affirmation of Principles of Common Law

This is a reaffirmation of the essential principles of the common law, but puts it beyond the power of either Congress or the courts to abrogate them. It follows, as a matter of course, that the effect of this provision commences with the statutes fixing or declaring offenses, and, as to them, insures the general rule of the common law that they are not to be construed to embrace offenses which are not within their intention and terms. This does not mean that all the elements of a crime must be set out in the statute on which the prosecutor relies, nor that the statute may not create an offense by the use of inapt or imperfect phraseology, but they must be in some way declared by the legislative power, and can not be constructed by the courts from any supposed intention of the legislature which the statute fails to state.

U. S. *v.* Potter, 56 Fed. 88.
Paraiso *v.* U. S., 207 U. S. 368.

The food and drugs act, which declares that "If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein which is false and fraudulent," is sufficiently certain as to permit of the laying of a definite charge as required by this amendment.

Seven Cases *v.* U. S., 239 U. S. 510.

Standard of Guilt

Food control act of August 10, 1917, as amended October 22, 1919, penalizing the making of sales of necessaries at unreasonable prices, sets up no ascertainable standard of guilt and is invalid.

U. S. *v.* Cohen Grocery Co., 255 U. S. 81.
Weeds, Inc., *v.* U. S., 255 U. S. 109.

Indictment Must Set Out Particulars

In general.—Under a statute which provides for the punishment of those who conspire "to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States," an indictment which, in substance, charges that the intent of the accused was to hinder and prevent citizens in the free exercise and enjoyment of "every, each, all, and singular" the rights granted them by the Constitution, with no specification of any particular right, is too vague and general.

U. S. *v.* Cruikshank, 92 U. S. 557.

See also—

Rosen *v.* U. S., 161 U. S. 40, as to bill of particulars of matter not proper to set out in indictment; and see also Bartell *v.* U. S., 227 U. S. 427; Burton *v.* U. S., 202 U. S. 344.

Furnishing copy of indictment.—There is no general obligation on the part of the Government to furnish copies of indictments to defendants. "The object of the constitutional provision was merely to secure those rights which by the ancient rules of the common law had been denied to them; but it was not contemplated that this should be done at the expense of the Government. We have no doubt, however, of the power of the court to order a copy of the indictment to be furnished upon the request of the defendant, and at the expense of the Government; and, when such order is made, the clerk is entitled to his fee for the copy."

U. S. *v.* Van Duzee, 140 U. S. 173.

Reading indictment.—A recital in the record that "thereupon the defendant, being arraigned upon the indictment, pleads thereto not guilty and for trial puts himself upon the country, and the attorney of the United States does the like," is sufficient to show that the defendant was informed of the accusation against him by the reading of the indictment.

Johnson *v.* U. S., 225 U. S. 405.

An indictment in the language of the statute is not sufficient unless it apprise the accused with reasonable certainty of the nature of the accusation against him, to the end that he may prepare his defense and plead the judgment as a bar to any subsequent prosecution for the same offense.

U. S. *v.* Simmons, 96 U. S. 360.

In summoning witnesses before a grand jury it is sufficient to apprise them of the names of the parties with respect to whom they will be called upon to testify, without indicating the nature of the charge against such persons.

Hale *v.* Henkel, 201 U. S. 43.

To Be Confronted with the Witnesses Against Him

The Right is Without Exception

The accused shall enjoy the right to be confronted with the witnesses against him, not if they can be produced nor if they be within the jurisdiction, but absolutely and on all occasions.

U. S. *v.* Angell, 11 Fed. 43.
U. S. *v.* Aviles, 222 Fed. 474.

The defendant in a contempt case is not entitled to be confronted with the witnesses against him in open court.

Merchants Stock & Grain Co. *v.* Board of Trade, 201 Fed. 20.

This amendment does not accord the right to be apprised of the names of the witnesses who appeared before the grand jury.

Wilson *v.* U. S., 221 U. S. 361.

As to rights of accused to be confronted with witnesses under the Philippine bill of rights, see—

Dowdell *v.* U. S., 221 U. S. 325.
Diaz *v.* U. S., 223 U. S. 442.

Foreign Extradition

This amendment applies to criminal prosecutions in this country and not to persons extradited for trial under treaties with foreign countries whose laws may be entirely different.

Ex parte La Mantia, 206 Fed. 330.

In Action to Recover Value of Forfeited Merchandise

This constitutional right is not infringed by permitting a deposition of a living witness to be read in an action brought to recover the value of merchandise forfeited to the United States by reason of acts in violation of law.

U. S. *v.* Zucker, 161 U. S. 480.

Judgment of Conviction of Larceny, Etc., as Evidence Against Receiver

So much of Act of Congress of March 1, 1875, as declares that the judgment of conviction against the principal felons shall be conclusive evidence in the prosecution against the receiver that the property of the United States alleged to have been embezzled, stolen, or purloined had been embezzled, etc., is in violation of this clause.

Kirby *v.* U. S., 174 U. S. 47.

Dying Declaration

The admission of dying declarations is an exception to this rule. This exception was well established long before the adoption of the Constitution, and was not intended to be abrogated.

Kirby *v.* U. S., 174 U. S. 61.
Robertson *v.* Baldwin, 165 U. S. 282.

Testimony Upon Former Trial

This provision is not infringed by permitting the testimony of a witness sworn upon a former trial to be read against the accused when a copy of the stenographic report of the former

testimony is supported by an oath of the stenographer that it is a correct transcript of his notes and of the testimony of the deceased witness.

Mattox *v.* U. S., 156 U. S. 240.

See also—

Motes *v.* U. S., 178 U. S. 471, as to absence of witness due to negligence of the Government;

Reynolds *v.* U. S., 98 U. S. 160, as to absence of witness by procurement of defendant;

Dowdell *v.* U. S., 221 U. S. 325, as to supplying parts of record on appeal.

Assistance of counsel in deportation cases.—The rules of the Secretary of Labor concerning deportation cases do not require that a person under investigation prior to application for warrant of arrest shall be advised of his right to have counsel and to decline to answer questions before being interrogated as to his alienage.

Bilokumsky *v.* Tod, 263 U. S. 149.

Amendment 7.[1]—CIVIL TRIALS.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Leading Cases

In Capital Traction Co. *v.* Hof (174 U. S. 1) it was said:

> It must therefore be taken as established, by virtue of the seventh amendment of the Constitution, that either party to an action at law * * * in a court of the United States, where the value in controversy exceeds $20, has the right to a trial by jury; that when a trial by jury has been had in an action at law in a court either of the United States or of a State the facts there tried and decided can not be reexamined in any court of the United States otherwise than according to the rules of the common law of England (p. 13).

Parsons *v.* Bedford (3 Pet. 433) contains a discussion of what is meant by suits at common law.

In Barton *v.* Barbour (104 U. S. 126) it was held that a jury trial is not a proceeding in equity. The right of trial by jury, considered as an absolute right, does not extend to cases of equity jurisdiction. If it be conceded or clearly shown that the case belongs to this class, the trial of questions involved in it belongs to the court itself, no matter what may be its importance or complexity.

In Springville *v.* Thomas (166 U. S. 708) it was held that this amendment secured unanimity in verdicts and that an act of Congress can not change it. The constitutional requirements are all satisfied if one opportunity is had for the trial of all parts of a case. Everything beyond that is matter of legislative discretion, not of constitutional right.

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[1] See p. 25 for ratification.

To What Courts Applicable

Not Applicable to Actions in State Courts

This amendment applies only to courts sitting under authority of the United States.

Pearson *v.* Yewdall, 95 U. S. 294.
St. Louis, etc., Land Co. *v.* Kansas City, 241 U. S. 419.
Lloyd *v.* Dollison, 194 U. S. 447.
Bolln *v.* Nebraska, 176 U. S. 87.
Brown *v.* New Jersey, 175 U. S. 174.
Brown *v.* Walker, 161 U. S. 606.
Monongahela Nav. Co. *v.* U. S., 148 U. S. 324.
McElvaine *v.* Brush, 142 U. S. 158.
Eilenbecker *v.* Plymouth County, 134 U. S. 34.
Spies *v.* Illinois, 123 U. S. 131.
Walker *v.* Sauvinet, 92 U. S. 93.
Edwards *v.* Elliott, 21 Wall. 552.
Justices *v.* Murray, 9 Wall. 277.
Fox *v.* Ohio, 5 How. 434.
Barron *v.* Baltimore, 7 Pet. 243.
Livingston *v.* Moore, 7 Pet. 551.

Trial in Federal Court Under State Statute

To the contention that a State workmen's compensation act violates this amendment in denying the right to trial by jury, in so far as it must be followed in the Federal courts in cases that are within its provisions, the court said:

> So far as private rights of action are preserved, this is no doubt true; but with respect to those we find nothing in the act that excludes a trial by jury as between employee and employer, the act abolishes all right of recovery in ordinary cases, and therefore leaves nothing to be tried by jury.

Mountain Timber Co. *v.* Washington, 243 U. S. 219.

Sufficiency of Evidence

A reviewing court can not invade the province of the jury, by determining questions of credibility and weight of evidence, and then drawing the conclusion from the residuum of evidence that there is no evidence.

Goldman *v.* U. S., 245 U. S. 474.

In State Courts Administering Federal Statutes

In a suit in a State court brought under the Federal employers' liability act, State practice may be observed, and a verdict by less than 12 jurors as permitted by State statute does not violate this clause.

Minnesota, etc., R. Co. *v.* Bombolis, 241 U. S. 211.
St. Louis, etc., R. Co. *v.* Brown, 241 U. S. 223.
Chesapeake, etc., R. Co. *v.* Carnahan, 241 U. S. 241.
Louisville, etc., R. Co. *v.* Stewart, 241 U. S. 261.
Chesapeake, etc., R. Co. *v.* Kelly, 241 U. S. 485.
Chesapeake, etc., R. Co. *v.* Gainey, 241 U. S. 494.

Applicable to Territorial Courts

The provisions relating to the right of trial by jury in suits at common law apply to the Territories of the United States.

Thompson *v.* Utah, 170 U. S. 346.
Callan *v.* Wilson, 127 U. S. 550.
Kennon *v.* Gilmer, 131 U. S. 28.
Webster *v.* Reid, 11 How. 460.
See also—
Capitol Traction Co. v. Hof, 174 U. S. 5, as to applicability to the courts of the District of Columbia.

In Suits at Common Law

This provision should be understood "as limited to rights and remedies peculiarly legal in their nature, and such as it was proper to ascertain in courts of law and by the appropriate modes and proceedings of courts of law."

Shields *v.* Thomas, 18 How. 262.

The phrase "common law" found in this clause is used in contradistinction to equity and admiralty and maritime jurisprudence.

Parsons *v.* Bedford, 3 Pet. 446.
Ex parte Simons, 247 U. S. 231.

Concurrent jurisdiction at common law and in admiralty does not imply exclusion of jurisdiction from tribunals in cases admitted to have been cases in admiralty without trial by jury.

Waring *v.* Clarke, 5 How. 460.

Matters of Fact in Equity Proceedings

In General

The right of trial by jury, considered as an absolute right, does not extend to cases of equity jurisdiction. If it be conceded or clearly shown that a case belongs to this class, the trial of the question involved belongs to the court itself, no matter what may be its importance or complexity.

Barton *v.* Barbour, 104 U. S. 133.
Bien *v.* Robinson, 208 U. S. 423.

Where the ascertainment of the plaintiff's demand is by action at law, the fact that the chancery court has power to summon a jury on occasion can not be regarded as the equivalent of the right of trial by jury.

Cates *v.* Allen, 149 U. S. 459.

Adequate Remedy at Law

This amendment preserves the right of jury trial against any infringement by any department of the Government, and section 723, Revised Statutes, prohibits all courts of the United States from sustaining suits in equity where the remedy is complete at law.

Smith *v.* American Nat. Bank, 89 Fed. 832.

Under Bankruptcy Act

The provision in the bankruptcy act of 1898, authorizing the court to reexamine the reasonableness of a fee paid to an at-

torney for services to be rendered in contemplation of filing a petition in bankruptcy, does not deprive the parties of rights secured by this amendment.

In re Wood, 210 U. S. 246.

Suits Against the Government

Suits against the Government in the Court of Claims are not suits at common law within the true meaning of this amendment, and an act of Congress referring to the trial of a cause in which the Government may plead against the claimant in the Court of Claims any set-off, counterclaim, claim for damages, or other demand, and providing that the court shall hear and determine such claim and demand, both for and against the Government and the claimant, is not repugnant to this amendment.

McElrath *v.* U. S., 102 U. S. 440.

An order of the Court of Claims attempting to reinstate a dismissed case in plain violation of the plaintiff's right to dismiss it, and an effect of which would be to deprive the plaintiff of the right of trial by jury in a State court, may be corrected by mandamus.

Ex parte Skinner & Eddy Corp., 265 U. S. 86.

Claims Against Municipal Corporation

A Territorial statute creating a special tribunal for hearing and deciding upon claims against a municipal corporation, which have no legal obligation, and which therefore could not be enforced in a court, but which the legislature thinks have sufficient equity and are based upon a sufficiently strong moral obligation to make it proper for it to provide for their investigation and for the payment of such as are decided to be proper, by taxation upon property situated in the city, does not violate this amendment for failing to make provision for a trial by jury in ascertaining the facts, as the proceeding is not in the nature of a suit at common law.

Guthrie Nat. Bank *v.* Guthrie, 173 U. S. 534.

Proceeding in Rem for Forfeiture

In a proceeding *in rem* for the forfeiture of property alleged to have been manufactured and sold in violation of the internal revenue law, the claimants are entitled to the intervention of a jury. In declaring that the proceeding should be in the nature of a proceeding *in rem*, Congress did not intend to confer admiralty jurisdiction in the sense of requiring that the cases should be tried as cases of strict admiralty jurisdiction, but intended to provide for a summary and efficient mode of enforcing the acts of Congress. The thing—the property subject to forfeiture—is to be seized and held in possession subject to the action of the court.

U. S. *v.* Whiskey, 1 Bond (U. S.) 587.

Seizures on Land Under the Revenue Laws

In cases of seizure made on land under the revenue laws, the district court proceeds as a court of common law according to the course of exchequer on informations *in rem*, and the trial of issues of fact is to be by jury.

The *Sarah*, 8 Wheat. 391.

For Possession of Real Estate

An action for the recovery of real estate to obtain its possession and enjoyment is one in which both parties have a constitutional right to call for a jury.

Whitehead *v.* Shattuck, 138 U. S. 151.

Cancellation of Naturalization Certificate

A suit brought under the naturalization law of 1906 to set aside and cancel a naturalization certificate as fraudulently and illegally secured is not one at common law.

Luria v. U. S., 231 U. S. 9.

Right of Trial by Jury

A trial by a jury of 12 men before a justice of the peace, having been unknown in England or America before the Declaration of Independence, could hardly have been within the contemplation of Congress in proposing, or of the people in ratifying, the seventh amendment.

Capital Traction Co. v. Hof, 174 U. S. 1, holding that it is not "trial by jury," but "the right of trial by jury," which the amendment declares "shall be preserved."

In Liberty Oil Co. *v.* Condon Nat. Bank (260 U. S. 235) Chief Justice Taft said that this amendment must be read in the light of the practice prevailing in the English courts of law and chancery when the Constitution and the amendment were adopted.

Without a waiver of the right of trial by jury, by consent of parties, the court errs if it substitutes itself for the jury, and, passing upon the effect of the evidence, finds the facts involved in the issue and renders judgment thereon.

Baylis v. Travelers' Ins. Co., 113 U. S. 320.

The law makes it the duty of the jury to return a verdict according to the evidence in the particular case before them. But if there are no facts in evidence bearing upon the issue to be determined, it is the duty of the court, especially when so requested, to instruct them as to the law.

Sparf *v.* U. S., 156 U. S. 99.

Granting a nonsuit for want of sufficient evidence is not an infringment of the constitutional right of trial by jury.

Coughran *v.* Bigelow, 164 U. S. 308.

When the trial judge is satisfied upon the evidence that the plaintiff is not entitled to recover, and that a verdict if rendered

for the plaintiff must be set aside, the court may instruct the jury to find for the defendant.

Treat Mfg. Co. *v.* Standard Steel, etc., Co., 157 U. S. 674.

Adoption of State Remedies

In General

Where the laws of a particular State gave a remedy in equity, as, for instance, a bill by a party in or out of possession to quiet title to lands, such remedy would be enforced in the Federal courts if it did not infringe upon the constitutional rights of the parties to a trial by jury.

Greeley *v.* Lowe, 155 U. S. 75.

Blending of Legal and Equitable Remedies

The right given by this provision can not be dispensed with except by the assent of the parties entitled to it, nor can it be impaired by any blending with a claim properly cognizable at law of a demand for equitable relief in aid of the legal action or during its pendency. Such aid in the Federal courts must be sought in separate proceedings, to the end that the right to a trial by a jury may be preserved intact.

Scott *v.* Neely, 140 U. S. 109.

Summary Judgment Against Surety on Appeal Bond

The constitutional right of trial by jury presents no obstacle to the rendering of a summary judgment against the sureties on an appeal bond upon affirmance of the decree appealed from, according to the statutory practice followed in State courts, since by becoming a surety the party submits himself to be governed by the fixed rules which regulate the practice of the court.

Pease *v.* Rathbun-Jones, etc., Co., 243 U. S. 273.

Unanimity in Finding a Verdict

A Territorial statute providing that "in all cases a verdict may be rendered on the concurrence therein of nine or more members of the jury" is invalid.

American Pub. Co. *v.* Fisher, 166 U. S. 466.
Springville *v.* Thomas, 166 U. S. 707.
Chicago, etc., R. Co. *v.* Ward, 252 U. S. 18.
St. Louis, etc., R. Co. *v.* Brown, 241 U. S. 223.

As the right of trial by jury in certain suits at common law is preserved by this amendment, "such a trial implies that there shall be a unanimous verdict of 12 jurors in all Federal courts where a jury trial is held."

Maxwell *v.* Dow, 176 U. S. 586.

Judgment in Absence of Affidavit of Defense

A rule of the Supreme Court of the District of Columbia providing for a judgment by default in an action *ex contractu* on failure of a defendant to show by affidavit a good defense does not deprive the defendant of the right of trial by jury. It prescribes the means of making an issue. The issue made as prescribed, the right of trial by jury accrues. The purpose of

the rule is to preserve the court from frivolous defenses and to defeat attempts to use formal pleading as means to delay the recovery of just demands.

Fidelity, etc., Co. *v.* U. S., 187 U. S. 320.

Prima Facie Effect of Findings of Interstate Commerce Commission

The provision of the act to regulate commerce that "the findings and order of the commission shall be *prima facie* evidence of the facts therein stated" does not infringe upon the right of trial by jury.

Meeker *v.* Lehigh Valley R. Co., 236 U. S. 439.

Specific Answers to Special Interrogatories

It is within the power of the legislature of a Territory to provide that on a trial of a common-law action the court may, in addition to the general verdict, require specific answers to special interrogatories, and, when a conflict is found between the two, render such a judgment as the answers to the special questions compel.

Walker *v.* New Mexico, etc., R. Co., 165 U. S. 598.

Finality of Decisions of Customs Appraisers

A statute making the decision of customs appraisers final is not unconstitutional as depriving importers of a right to have the question of the dutiable value of goods passed upon by a jury. The Government has a right to prescribe the conditions attending the importation of goods upon which it will permit the collector to be sued, and the provision as to the finality of the appraisement is virtually a rule of evidence to be observed in the trial of a suit brought against the collector.

Auffmordt *v.* Hedden, 137 U. S. 329.

Waiver of Right of Trial by Jury

Parties have a right to enter into a stipulation waiving a jury and submit the case to the court upon an agreed statement of facts, even without any legislative provision for waiver by a written stipulation.

Henderson's Distilled Spirits, 14 Wall. 53.
Rogers *v.* U. S., 141 U. S. 554.
Campbell *v.* Boyreau, 21 How. 223.
Parsons *v.* Armor, 3 Pet. 425.

By sections 648 and 649, Revised Statutes, Congress has provided for the trial of issues of fact in civil cases by the court without the intervention of a jury, only when the parties waive their right to a jury by a stipulation in writing.

Baylis *v.* Travelers Ins. Co., 113 U. S. 316.

See also—

Hodges *v.* Easton, 106 U. S. 412, as to presumption against waiver.

Facts Reexamined Only According to Rules of Common Law

In General

This is a prohibition to the courts of the United States to reexamine any facts tried by a jury in any other manner. The only modes known to the common law to reexamine such facts are the granting of a new trial by the court where the issue was tried or to which the record was properly returnable, or the award of a *venire facias de novo*, by an appellate court, for some error of law which intervened in the proceedings.

Parsons *v.* Bedford, 3 Pet. 447.

Barbour *v.* Moore, 10 App. Cas. (D. C.) 50, discussing Metropolitan R. Co. *v.* Moore, 121 U. S. 558, and citing Wilson *v.* Everett, 139 U. S. 616; Aetna Life Ins. Co. *v.* Ward, 140 U. S. 76.

See also—

Capital Traction Co. *v.* Hof, 174 U. S. 7, for a discussion of "Rules of common law."

Control of Court Over Verdict

This does not mean only and barely that there shall be a verdict of 12 men under any conditions that may be prescribed, but that there shall be a trial by jury as understood at common law. The control of the court over the verdict after it is given is as much a part of the trial by jury as the giving of the verdict itself, and the right to have the issues tried by a second jury (or even a third jury) when the verdict of the first jury is affected by some infirmity for which the common law required the trial court to set that verdict aside, is as much a right of "trial by jury" preserved by the Constitution as the first trial.

Hughey *v.* Sullivan, 80 Fed. 76.

See also—

Baylis *v.* Travelers' Ins. Co., 113 U. S. 320, as to setting aside of verdict on the ground of insufficiency of the evidence;

Arkansas Valley Land, etc., Co. *v.* Mann, 130 U. S. 72, as to decision on motion for new trial dependent on remission of part of the verdict.

Expression of Opinion on the Facts by the Court

In the courts of the United States, as in those of England from which our practice was derived, the judge, in submitting a case to the jury, may, at his discretion, whenever he thinks it necessary to assist them in arriving at a just conclusion, comment upon the evidence, call their attention to parts of it which he thinks important, and express his opinion upon the facts; and the expression of such an opinion, when no rule of law is incorrectly stated, and all matters of fact are ultimately submitted to the determination of the jury, can not be reviewed on writ of error.

Vicksburg, etc., R. Co. *v.* Putnam, 118 U. S. 553.

Entering Judgment for Defendant Notwithstanding Verdict

Where a verdict has been rendered for the plaintiff, the court is without authority, on a motion for new trial, to render judg-

ment for the defendant on the evidence notwithstanding the verdict.

Pedersen *v.* Delaware, etc., R. Co., 229 U. S. 146.

On Removals from State Courts

This clause has no application to a case which has been removed from a State court into a United States court after a judgment in the State court had been vacated, the verdict set aside, and a new trial granted.

Insurance Company *v.* Dunn, 19 Wall. 226.
Justices *v.* Murray, 9 Wall, 277.
Maxwell *v.* Dow, 176 U. S. 598.
Stevenson *v.* Williams, 19 Wall. 576.
McKee *v.* Rains, 10 Wall. 25.

On Writ of Error from Federal Supreme Court

The last clause of this amendment is not restricted in its application to suits at common law tried before juries in United States courts. It applies equally to a case tried before a jury in a State court and brought to the United States Supreme Court by a writ of error from the highest court of the State.

Chicago, etc., R. Co. *v.* Chicago, 166 U. S. 242.

This clause applies to the appellate powers of the United States in all common-law cases coming up from an inferior Federal court, and also to the circuit court in like cases in the exercise of its appellate power, and also in cases of Federal cognizance coming up from a State court.

Justices *v.* Murray, 9 Wall 274, in which the court held unconstitutional under this amendment the act of Congress of March 3, 1863, providing for removal to United States circuit courts of cases brought in State courts against Federal officers for arrests, etc., made under authority of the President, the circuit court to try the facts and the law as though the case had been originally brought there.

Amendment 8.[1]—PUNISHMENT FOR CRIME.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Leading Cases

Weems v. U. S. (217 U. S. 349), containing a history of the adoption of this amendment and cases thereunder.

In In re Kemmler (136 U. S. 436) it was held that death by electrocution was not cruel.

In Waters-Pierce Oil Co. v. Texas (212 U. S. 86) it was held that the Supreme Court of the United States will interfere with the action of the State courts only when they impose fines which amount to a deprivation of property without due process of law.

O'Neil *v.* Vermont, 144 U. S. 323.
Pervear *v.* Massachusetts, 5 Wall. 475.

[1] For ratification, see p. 25.

Not a Limitation on the States

This amendment "is addressed to the courts of the United States exercising criminal jurisdiction, and is doubtless mandatory to them and a limitation upon their discretion," and does not apply to the States.

Ex parte Watkins, 7 Pet. 574.
Barron *v.* Baltimore, 7 Pet. 243.
Livingston *v.* Moore, 7 Pet. 551.
Spies *v.* Illinois, 123 U. S. 131.
Eilenbecker *v.* Plymouth County, 134 U. S. 34.
McElvaine *v.* Brush, 142 U. S. 158.
O'Neil *v.* Vermont, 144 U. S. 332.
Monongahela Nav. Co. *v.* U. S., 148 U. S. 324.
Brown *v.* Walker, 161 U. S. 606.
Brown *v.* New Jersey, 175 U. S. 174.
Bolln *v.* Nebraska, 176 U. S. 87.
Lloyd *v.* Dollison, 194 U. S. 447.
Ughbanks *v.* Armstrong, 208 U. S. 481.
Collins *v.* Johnson, 237 U. S. 502.

Effect of the Fourteenth Amendment

In O'Neil v. Vermont (144 U. S. 323), Justice Field, in a dissenting opinion, holds that the fourteenth amendment has made this amendment applicable to the States.

See also—
State *v.* Burlington Drug Co., 78 Atl. 882.

As to applicability to Territories, see—
Wilkerson *v.* Utah, 99 U. S. 133.

Excessive Bail

To require larger bail than the prisoner could give would be to require excessive bail and to deny bail in a case clearly bailable by law.

In U. S. v. Lawrence (4 Cranch [C. C.] 518) the court said that the discretion of the magistrate in taking bail in a criminal case is to be guided by the compound consideration of the ability of the prisoner to give bail and the atrocity of the offense.

U. S. *v.* Brawner, 7 Fed. 89.

Excessive Fines, Cruel and Unusual Punishments

The sentence and punishment imposed upon a defendant for any violation of the provisions of the statute, which is within the punishment provided for by the statute, can not be regarded as excessive, cruel, and unusual.

Jackson *v.* U. S., 102 Fed. 473.
Gulf, etc., R. Co. *v.* Texas, 246 U. S. 58.

Undue leniency in one case does not transform a reasonable punishment in another case to a cruel one.

Howard *v.* Fleming, 191 U. S. 136.

Difficulty would attend the effort to define with exactness the extent of the constitutional provision which prohibits the inflic-

tion of cruel and unusual punishments, but it is safe to affirm that punishments of torture, such as those formerly inflicted for atrocious crimes and for high treason, and all others in the same line of unnecessary cruelty, have been forbidden by this amendment.

Wilkerson *v.* Utah, 99 U. S. 135.

The act of Congress prohibiting the placing of letters in the mail for the purpose of executing a scheme to defraud is not invalid for making each putting of a letter into the post-office a separate offense.

Badders *v.* U. S., 240 U. S. 391.

Fifty dollars fine and three months' hard labor for the illegal sale of liquor held not to be violative of this amendment.

Pervear *v.* Massachusetts, 5 Wall. 475.

Shooting as a mode of executing death penalty held not to be a cruel and unusual punishment for the crime of first-degree murder.

Wilkerson *v.* Utah, 99 U. S. 134

Appellate Jurisdiction of Federal Supreme Court

The Supreme Court has no appellate jurisdiction to revise sentences of inferior courts in criminal cases, and can not, even if the excess of the fine were apparent on the record, reverse the sentence.

Ex parte Watkins, 7 Pet. 573.
American Constr. Co. *v.* Jacksonville, etc., R. Co., 148 U. S. 378.

The act of Congress of March 2, 1907 (34 Stat. 1246), authorizing the United States to take a writ of error in criminal cases to the Supreme Court for certain purposes, is valid.

Taylor *v.* U. S., 207 U. S. 120.

Amendment 9.[1]—RIGHTS OF THE PEOPLE.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

This amendment restrains only the powers of the General Government and indicates that the Federal Constitution is but a delegation of powers, which powers, together with the implied powers, constitute all that the Federal Government has or may presume to exercise.[2]

Livingston *v.* Moore, 7 Pet. 551.
Holmes *v.* Jennison, 14 Pet. 558.

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[1] For ratification, see p. 25.

[2] See Rules of Construction, p. 37.

Amendment 10.[1]—RESERVED STATE POWERS.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Leading Cases

In McCulloch *v.* Maryland (4 Wheat. 406) Chief Justice Marshall said:

> The tenth amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word "expressly" and declares only that the powers "not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people," thus leaving the question whether the particular power which may become the subject of contest has been delegated to the one Government or prohibited to the other to depend on a fair construction of the whole instrument. * * * A constitution to contain an accurate detail of all the subdivisions of which its great powers will admit and of all the means by which they may be carried into execution would partake of the prolixity of a legal code and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American Constitution is not only to be inferred from the nature of the instrument but from the language.

In Collector *v.* Day (11 Wall. 124) the court held:

> It is a familiar rule of construction of the Constitution of the Union that the sovereign powers vested in the State governments by their respective constitutions remained unaltered and unimpaired, except so far as they were granted to the Government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood this rule of interpretation is expressly declared in the tenth article of the amendments.

In Kansas *v.* Colorado (206 U. S. 46) Justice Brewer, in referring to this amendment, said that it—

> disclosed widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act.

The principal factor in this article is "the people."

In McClung *v.* Silliman (6 Wheat. 604) it was held that a State court can not issue a *mandamus* to an officer of the United States.

Definition

The reservation to the States respectively can only mean the reservation of the rights of sovereignty which they respectively possessed before the adoption of the Constitution of the United

[1] See also "Powers remaining in the States," under commerce clause, p. 145. See p. 25 for ratification. For general rules of construction and interpretation, see p. 37.

States, and which they had not parted from by that instrument. And any legislation by Congress beyond the limits of the power delegated would be trespassing upon the rights of the States or the people, and would not be the supreme law of the land, but null and void.

Gordon *v.* U. S., 117 U. S. 705.

The powers the people have given to the General Government are named in the Constitution, and all not there named, either expressly or by implication, are reserved to the people and can be exercised only by them, or upon further grant from them.

Turner *v.* Williams, 194 U. S. 295. (Justice Brewer's concurring opinion.)

Police Power [1]

In General

The power of the States to regulate matters of internal police within their limits applies not only to the health, morals, and safety of the public but also to whatever promotes the public peace, comfort, and convenience. Statutes enacted under this power may be harsh and oppressive without violating the Constitution.

Beer Co. *v.* Massachusetts, 97 U. S. 25.
Patterson *v.* Kentucky, 97 U. S. 501.
Mugler *v.* Kansas, 123 U. S. 623.
Lake Shore, etc., R. Co. *v.* Ohio, 173 U. S. 285.
Bacon *v.* Walker, 204 U. S. 311.
Keller *v.* U. S., 213 U. S. 138.
Southern Bell Tel. Co. *v.* Calhoun, 287 Fed. 381.

Narcotic Drug Act

State law regulating administration, sale, and possession of narcotic drugs, which forbids physicians to supply drug addicts otherwise than through prescriptions, held not in conflict with Federal narcotic drug act.

Whipple *v.* Martinson, 256 U. S. 41.

Regulation of Commerce [2]

In general.—The police power of the States is limited by the express prohibitions in the Federal Constitution upon a State's action. For instance, the State may regulate fares and freights; but inasmuch as the regulation of interstate commerce is vested in the General Government, the State's police power to regulate fares and freight does not extend to interstate commerce.

State *v.* Kansas City, etc., R. Co., 32 Fed. 722.

See also—

Lottery case, 188 U. S. 321, as to Federal prohibition against transportation of lottery tickets in interstate commerce.

Northern Securities Co. *v.* U. S., 193 U. S. 197, as to violation of Federal antitrust act.

Dick *v.* U. S., 208 U. S. 340, as to Federal liquor laws applying to Indian country.

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[1] See also same subject, pp. 146, 309, 672, and 726.

[2] See also commerce clause, p. 80.

Federal tax on manufacture and sale of commodities.—An act of Congress imposing taxes on the manufacture and sale of oleomargarine, which provides for the marking of packages used by retail dealers in oleomargarine, does not invade the police power of the State when the principal object of the act is the raising of revenue and not the protection of purchasers.

U. S. *v.* Dougherty, 101 Fed. 439.
In re Kollock, 165 U. S. 532.

The Child Labor Tax Law (Act of Congress of February 24, 1919), imposing a tax on the income of persons employing child labor was manifestly intended to regulate the employment of child labor, which is a matter reserved to the States under this amendment.

Bailey *v.* Drexel Furn. Co., 259 U. S. 20.

White persons on Indian lands.—In connection with making unlawful the settlement of white persons on Indian lands, it was held that the power of the State to make regulations to preserve the peace of the community is absolute and has never been surrendered.

New York *v.* Dibble, 21 How. 368.

Federal Interference with State Rights

This subject was discussed in Massachusetts *v.* Mellon (262 U. S. 447) in connection with the constitutionality of the so-called "maternity act."

In Dayton-Goose Creek Ry. *v.* U. S. (263 U. S. 456) it was held that the recapture clause of the transportation act of 1920, reducing net income from intrastate rates, is not an invasion of States' rights under this amendment.

To hold that the fourteenth amendment, which is a mere restriction on the powers of the State, by implication confers on Congress the power to legislate on the prohibited subject would be to violate this amendment.

Civil Rights Cases, 109 U. S. 3.

A State could not have been made a party to a bill to enforce a negro's right of suffrage, though it was alleged to have entered into a conspiracy to deprive negroes of such right, the circuit court having no constitutional power to control the State's action by any direct means.

Giles *v.* Harris, 189 U. S. 475.

The police power of the State can not be said to be unconstitutionally interfered with by the provisions of act February 20, 1907, section 3, for the deportation of an alien found to be practicing prostitution within three years after her entry into the United States, because it vests in the Federal authorities the power to try an immigrant for a violation of the penal laws of the State of which she has become a resident.

Zakonaite *v.* Wolf, 226 U. S. 272.

Section 2 of the supplemental prohibition act of November 23, 1912, in so far as it prevents physicians from prescribing intoxicating malt liquors for medicinal purposes, does not violate the tenth amendment, since it is not an invasion of power reserved to the States.

Everard's Breweries *v.* Day, 265 U. S. 545.

Transportation of Child-Made Goods in Interstate Commerce

Act of Congress September 1, 1916, declared unconstitutional.

Hammer *v.* Dagenhart, 247 U. S. 251.

State Taxation [1]

In General

The taxing power of a State is one of the attributes of sovereignty; it exists independently of the Federal Constitution and may be exercised to an unlimited extent upon all property, trades, business, and avocations existing or carried on within the territorial boundaries of the State, except so far as it has been surrendered to the Federal Government, either expressly or by necessary implication.

Railroad Co. *v.* Peniston, 18 Wall. 29.

See also—

Nathan *v.* Louisiana, 8 How. 82.
Ohio Life Ins. Co. *v.* Debolt, 16 How. 428.
Lane County *v.* Oregon, 7 Wall. 76.
In re Kollock, 165 U. S. 526.
Bank of Commerce *v.* New York City, 2 Black 620.
Veazie Bank *v.* Fenno, 8 Wall. 533.
Collector *v.* Day, 11 Wall. 113.
Ward *v.* Maryland, 12 Wall. 418.
Kirtland *v.* Hotchkiss, 100 U. S. 491.
McCray *v.* U. S., 195 U. S. 27.

Tax of Domestic Corporations

The exercise of the authority which every State possesses to tax its corporations and all their property, real and personal, and their franchises, and to graduate the tax upon the corporations according to their business or income or the value of their property, when this is not done by discriminating against rights held in other States, and the tax is not on imports, exports, or tonnage, or transportation to other States, can not be regarded as conflicting with any constitutional power of Congress.

Delaware Railroad Tax, 18 Wall. 232.

Concurrent State and Federal Power on the Same Subjects

Outside of the prohibitions, express and implied, contained in the Federal Constitution, the power of the States to tax for the support of their own governments is coextensive with the subjects within their unrestricted sovereign power, which shows conclusively that the power to tax may be exercised at the same time and upon the same subjects of private property by the United States and by the States without inconsistency and

[1] See also same subject, pp. 74, 180, 315, 362, 366, 600, 707, and 728.

repugnancy. Such a power exists in the United States by virtue of an express grant for the purpose, among other things, of paying the debts and providing for the common defense and general welfare; and it exists in the States for the support of their own governments, because they possessed the power without restriction before the Federal Constitution was adopted, and still retain it, except so far as the right is prohibited or restricted by that instrument.

Ward *v.* Maryland, 12 Wall. 428.

Limited by Grants of Federal Power

The power of a State to tax its own citizens or their property within its territory can not be used so as to obstruct the free course of the power given to Congress. It can not reach and restrain the action of the National Government within its proper sphere. It can not reach the administration of justice in the courts of the Union or the collection of the taxes of the United States or restrain the operation of any law which Congress may constitutionally pass.

Brown *v.* Maryland, 12 Wheat. 448.

Taxation by Congress of Municipal Revenue

The right of the States to administer their own affairs through their legislative, executive, and judicial departments, in their own manner through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal Government.

U. S. *v.* Baltimore, etc., R. Co., 17 Wall. 327.

Matters Relating to State Courts

The several State legislatures retain all the powers of legislation, delegated to them by the State constitutions, which are not expressly taken away by the Federal Constitution. The establishment of courts of justice, the appointment of judges, and the making of regulations for the administration of justice, within each State according to its laws, on all subjects not intrusted to the Federal Government, is the peculiar and exclusive province and duty of the State legislatures.

Calder *v.* Bull, 3 Dall. 388.

Shores of, and Soils Under, Navigable Waters

The shores of the navigable waters, and the soils under them, were not granted to the United States in the Constitution, but were reserved to the States, respectively.

Pollard *v.* Hagan, 3 How. 212.

AMENDMENT 11.[1]—SUITS AGAINST STATES.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Leading Cases

In Hans *v.* Louisiana (134 U. S. 11) the court said:

> This amendment, expressing the will of the ultimate sovereignty of the whole country, superior to all legislatures and all courts, actually reversed the decision of the Supreme Court.[2] It did not, in terms, prohibit suits by individuals against the States, but declared that the Constitution should not be construed to import any power to authorize the bringing of such suits.

In Cohens *v.* Virginia (6 Wheat. 406) it was held:

> That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the Nation, may be inferred from the terms of the amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases; and in these a State may still be sued.

In Poindexter *v.* Greenhow (114 U. S. 287) the court said:

> It is true that the question whether a suit is within the prohibition of the eleventh amendment is not always determined by reference to the nominal parties on the record. In connection with that case see—
>
> In re Ayers, 123 U. S. 443.
> Fitts *v.* McGhee, 172 U. S. 516.
> Ex parte Young, 209 U. S. 123.
> Graham *v.* Folsom, 200 U. S. 248.
> McNeill *v.* Southern R. Co., 202 U. S. 543.
> Murray *v.* Distilling Co., 213 U. S. 151.
> Smith *v.* Reeves, 178 U. S. 436.

In Gunter *v.* Atlantic Coast Line (200 U. S. 283) the following maxims were established:

1. In view of the prohibitions of the eleventh amendment, a State without its consent may not be sued by an individual in a circuit court of the United States.

2. A suit against State officers to enjoin them from enforcing a tax alleged to be in violation of the Constitution is not a suit against a State within the prohibition of this amendment.

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[1] This amendment was passed in consequence of the decision of Chisholm *v.* Georgia (2 Dall. 419), holding that a State could be sued by a citizen of another State in assumpsit. For ratification, see p. 27. See also Art. III, sec. 2, pp. 433 and 459.

[2] Chisholm *v.* Georgia, 2 Dall. 419.

3. A suit against individuals to prevent them as officers of a State from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff is not a suit against the State within the meaning of this amendment.

4. Although a State may not be sued without its consent, the immunity is a privilege which may be waived. Hence, when a State voluntarily becomes a party to a cause and submits its rights for judicial determination it will be bound thereby and can not escape the result of its own voluntary act by invoking the prohibitions of this amendment.

Against One of the United States

Neither public corporations nor political subdivisions are clothed with the immunity from suit which belongs to the State alone by virtue of its sovereignty.

Hopkins *v.* Clemson College, 221 U. S. 636.
Lincoln County *v.* Luning, 133 U. S. 530.
Graham *v.* Folsom, 200 U. S. 248.

Suits by Citizens of Same State

A suit against a State by one of its own citizens, the State not having consented to be sued, is unknown to and forbidden by the law, as much so as suits against a State by citizens of another State of the Union, or by citizens and subjects of foreign States.

Fitts *v.* McGhee, 172 U. S. 524.

Suits Between States [1]

While this amendment took from the Supreme Court all jurisdiction of all controversies between individuals and States, it left its exercise over those between States as free as it had been before.

Rhode Island *v.* Massachusetts, 12 Pet. 731.
Virginia *v.* West Virginia, 206 U. S. 290; 246 U. S. 565.

Unless the State prosecuted consents, this amendment prohibits the court from entertaining jurisdiction of a cause in which one State seeks relief against another State on behalf of its citizens, in a matter in which the State prosecuting has no interest of its own. One State can not create a controversy with another State, within the meaning of that term as used in the Constitution, by assuming the prosecution of debts owing by the other State to its citizens.

New Hampshire *v.* Louisiana, 108 U. S. 76.
North Dakota *v.* Minnesota, 263 U. S. 365.

But where a State has become absolute owner of obligations of another State, it may sue thereon in the Supreme Court of the United States.

South Dakota *v.* North Carolina, 192 U. S. 286.

[1] See also Art. III, sec. 2, p. 421, and "Cases between States," p. 458.

This amendment does not comprehend controversies between two or more States or between a State of the Union and a foreign State.

Cohens *v.* Virginia, 6 Wheat. 406.

Suits in Admiralty

A mere personal suit against a State to recover proceeds in its possession can not be commenced in the United States Supreme Court. Admiralty process can not issue when it is not a case where the property is in custody of a court of admiralty, or brought within its jurisdiction, and in the possession of any private person.

Governor of Georgia *v.* Madrazo, 1 Pet. 110; 7 Pet. 627.

Admiralty suits *in personam* can not be brought against a State without its consent, by an individual, whether a citizen of a State or not.

Ex parte State of New York, No. 1, 256 U. S. 490.

Equal Protection of the Laws

This amendment does not involve any denial to any person of the equal protection of the laws as contemplated in the fourteenth amendment.

Alabama *v.* Wolffe, 18 Fed. 836.

When a State Holds Corporation Stock

In a suit against a corporation an objection that a State is a member of the corporation can not be sustained. If the State be not necessarily defendant, though its interest may be affected by the decision, the courts of the United States are bound to exercise jurisdiction.

Louisville, etc., R. Co. *v.* Letson, 2 How. 550.
U. S. Bank *v.* Planters' Bank, 9 Wheat. 904.
Christian *v.* Atlantic, etc., R. Co., 133 U. S. 233.

When the State becomes the sole proprietor of the stock of a bank it can not be successfully contended that a suit against the bank for money had and received, instituted to recover the amount of a deposit, is one against a sovereign State.

Kentucky Bank *v.* Wister, 2 Pet. 322.

Suits on State Contracts

Those who deal in bonds and obligations of a sovereign State are aware that they must rely altogether on the sense of justice and good faith of the State, and the courts of the United States are expressly prohibited from exercising jurisdiction.

Washington Bank *v.* Arkansas, 20 How. 530.

Suits Against Receivers of State Assets

A suit against the receivers appointed under the South Carolina statute providing for the winding up of the State dispensary system was held to be a suit against the State.

Murray *v.* Wilson Distilling Co., 213 U. S. 151.
Carolina Glass Co. *v.* South Carolina, 240 U. S. 305.
See also—
Fleischman Co. *v.* Murray, 161 Fed. 152.

Suit for Money in the State Treasury

A suit on a demand for money actually in the State treasury, the possession of which was acquired by means which it was lawful for the State to exercise, can not be maintained under this amendment.

Governor of Georgia *v.* Madrazo, 1 Pet. 110; 7 Pet. 627.

Commenced or Prosecuted

The defendant who removes a judgment rendered against him by a State court into the Federal Supreme Court, for the purpose of reexamining the question whether that judgment be in violation of the Constitution or laws of the United States, does not commence or prosecute a suit against the State.

Cohens *v.* Virginia, 6 Wheat. 412.

State as a Nominal or Real Party

That the State is not named as a party defendant is not conclusive of the question whether the State is a party. Whether it is an actual party within the meaning of this amendment must be determined by a consideration of the nature of the case as presented on the whole record.

In re Ayers (123 U. S. 492) in which the court said:

It must be regarded as a settled doctrine of this court, established by its recent decisions, that the question whether a suit is within the prohibition of the eleventh amendment is not always determined by reference to the nominal parties on the record.

Poindexter *v.* Greenhow, 114 U. S. 270, 287.

This, it is true, is not in harmony with what was said by Chief Justice Marshall in Osborn *v.* U. S. Bank (9 Wheat. 738). In his opinion in that case he said:

It may, we think, be laid down as a rule which admits of no exception, that in all cases where jurisdiction depends on the party it is the party named in the record (p. 857).

But in Chicago, etc., R. Co. *v.* Dey (35 Fed. 869) the court said:

But recent cases set aside that rule, and establish a more reasonable one—that that amendment covers not only suits brought against the State by name, but those against its officers, agents, and representatives, where the State, though not named as defendant, is the real party against which relief is asked, and the judgment will operate.

See also—
In re Tyler, 149 U. S. 164.
Farmers' Nat. Bank *v.* Jones, 105 Fed. 459.

Scully *v.* Bird, 209 U. S. 481.
Illinois Cent. R. Co. *v.* Adams, 180 U. S. 28.
North Carolina *v.* Temple, 134 U. S. 30.

Suits Against State Officers

To Test Constitutionality of Statute

There is a wide difference between a suit against individuals holding official positions under a State, to prevent them, under the sanction of an unconstitutional statute, from committing by some positive act a wrong or trespass, and a suit against officers of a State merely to test the constitutionality of a State statute, in the enforcement of which those officers will act only by formal judicial proceedings in the courts of the State.

Fitts *v.* McGhee, 172 U. S. 529.
See also—
Smith *v.* Reeves, 178 U. S. 436 (to recover taxes paid upon alleged illegal levy).
Chandler *v.* Dix, 194 U. S. 591 (to set aside tax sale when State was purchaser).
Tindal *v.* Wesley, 167 U. S. 212 (to recover possession of land).

To Recover Money Unlawfully Taken

Where a suit is brought against defendants who claim to act as officers of a State, and, under color of an unconstitutional statute, commit acts of wrong and injury to the property of the plaintiff, to recover money or property in their hands unlawfully taken by them in behalf of the State, or for compensation for damages, such suit is not, within the meaning of the amendment, an action against the State.

Scott *v.* Donald, 165 U. S. 68, 107.

For Foreclosure of Mortgage on Property Held by the State

A bill filed against the governor of a State, the State treasurer, and the directors of a railroad company, no one of whom has any personal interest in the matter or any official authority to grant the relief asked, for the foreclosure of a mortgage and other equitable relief, of which properties the State has the legal title and is in the actual possession, is a suit in which the State is an indispensable party and the only proper defendant, and can not be maintained.

Cunningham *v.* Macon, etc., R. Co., 109 U. S. 447.

Mandamus Against State Officer

In general.—When a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation can not be had at law, may have an injunction to prevent it. In such cases the writs of *mandamus* and injunction are somewhat correlative to each other.

In either case, if the officer plead the authority of an unconstitutional law for the nonperformance or violation of his duty, it will not prevent the issuing of the writ.

Board of Liquidation *v.* McComb, 92 U. S. 541.
Rolston *v.* Missouri, 120 U. S. 411.

Mandamus against State banking board.—To compel it to repay a deposit in an insolvent bank out of the depositors' guaranty fund, or to issue a certificate of indebtedness and levy an assessment to make up any deficit in the fund, is a suit against the State.

Lankford *v.* Platte Iron Works Co., 235 U. S. 461.
American Water, etc., Co. *v.* Lankford, 235 U. S. 496.
Farish *v.* Oklahoma, 235 U. S. 498.
Johnson *v.* Lankford, 245 U. S. 541.
Martin *v.* Lankford, 245 U. S. 547.

To compel enforcement of statutory remedy.—A suit against the executive officers of a State in their official capacity to compel them to enforce the provisions of a statute appropriating certain taxes for the purpose of paying bonds and coupons issued under the statute, when the State, by an amendment to its constitution, has undertaken to prohibit them from doing so, can not be maintained. Such a supposed remedy implies power in the judiciary to compel the State to abide by and perform its contracts for the payment of money, not by rendering and enforcing a judgment in the ordinary form of judicial procedure, but by assuming the control of the administration of the fiscal affairs of the State to the extent that may be necessary to accomplish the end in view.

Louisiana *v.* Jumel, 107 U. S. 722.

To compel acceptance of tax-receivable coupons.—An action against a State officer to compel the acceptance of tax-receivable coupons, the validity of which is denied by the State, is substantially within the prohibition of this amendment, as the State is not only the real party to the controversy but the real party against which relief is sought by the statute.

Hagood *v.* Southern, 117 U. S. 67.

Injunctions Against State Officers

To restrain enforcement of unconstitutional statute.—A suit against individuals, for the purpose of preventing them, as officers of a State, from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of this amendment.

Prout *v.* Starr, 188 U. S. 543.
See also—
Tanner *v.* Little, 240 U. S. 369.
Harrison *v.* St. Louis, etc., R. Co., 232 U. S. 318.
Herndon *v.* Chicago, etc., R. Co., 218 U. S. 135.
Western Union *v.* Andrews, 216 U. S. 165.

Ludwig *v.* Western Union, 216 U. S. 146.
Hunter *v.* Wood, 209 U. S. 205.
General Oil Co. *v.* Crain, 209 U. S. 211.
Poindexter *v.* Greenhow, 114 U. S. 270.
Smyth *v.* Ames, 169 U. S. 518.
Davis *v.* Gray, 16 Wall. 203.

Individuals, who as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action.

Ex parte Young, 209 U. S. 123.
Greene *v.* Louisville, etc., R. Co., 244 U. S. 499.
Louisville, etc., R. Co. *v.* Greene, 244 U. S. 522.
Illinois Cent. R. Co. *v.* Greene, 244 U. S. 555.
Cavanaugh *v.* Looney, 248 U. S. 453.

In a suit to which the State is neither formally nor really a party, its officers, although acting by its order and for its benefit, may be restrained by injunction, when the remedy at law is inadequate, from doing positive acts, for which they are personally and individually liable, taking or injuring the plaintiff's property, contrary to a plain official duty requiring no exercise of discretion, and in violation of the Constitution or laws of the United States.

Belknap *v.* Schild, 161 U. S. 18.

A suit brought by an alien resident against the Attorney General and the county attorney to enjoin them from instituting a prosecution against his employer for violations of a statute requiring an employer of more than five workers to employ not less than 80 per cent qualified electors or native-born citizens of the United States is not a suit against the State.

Truax *v.* Raich, 239 U. S. 33.

To restrain collection of illegal tax.—A suit brought to test the legality of a tax is not obnoxious to the objection of being a suit against the State.

In re Tyler, 149 U. S. 164.
In re Ayers, 123 U. S. 443.
Gunter *v.* Atlantic Coast Line, 200 U. S. 273.

To restrain corporation commissioners from enforcing unlawful order.[1]—A suit against a corporation commission to restrain alleged illegal interferences with the property and interstate business of a railway company, the asserted right to interfere, which it was the object of the bill to enjoin, being based upon the assumed authority of a State statute, which the bill alleged

[1] See also Commerce Clause, p. 83.

to be in violation of rights of the railway company protected by the Federal Constitution is not in any proper sense one against the state.

McNeill *v.* Southern R. Co., 202 U. S. 543.
Reagan *v.* Farmers' Loan, etc., Co., 154 U. S. 390.
Prentis *v.* Atlantic Coast Line, 211 U. S. 210.
Ex parte Young, 209 U. S. 123.
Prout *v.* Starr, 188 U. S. 537.
Looney *v.* Crane Co., 245 U. S. 178.
See also—
Missouri *v.* Chicago, etc., R. Co., 241 U. S. 533, as to enforcing unreasonable rates.
Mississippi *v.* Illinois Cent. R. Co., 203 U. S. 335, as to interference with interstate mail trains.

To restrain impairment of contract.[1]—A complainant had, under an existing State statute, acquired a described tract of swamp or overflowed land belonging to the State. A subsequent statute declared certificates of sale of such land on which 20 per cent of the purchase price was not paid prior to a named date to be void, and required the board of commissioners to cancel them. The board threatened to sell the land described in the plaintiff's certificate. After holding that the new statute under which the board was proceeding to act impaired the contract theretofore made with the complainant, and that, under the facts of the case, he had a vested right to the land, the court held that a suit in equity brought by him against the members of the board to restrain them from selling the tract to which he had acquired an equitable right was not a suit against the State.

Pennoyer *v.* McConnaughty, 140 U. S. 8.
Hans *v.* Louisiana, 134 U. S. 1.

Waiver of Immunity

In General

The immunity from suit belonging to a State, which is respected and protected by the Constitution within the limits of the judicial power of the United States, is a personal privilege which it may waive at pleasure; so that a suit, otherwise well brought, in which a State had sufficient interest to entitle it to become a party defendant, its appearance in a court of the United States would be a voluntary submission to its jurisdiction; while, of course, those courts are always open to it as a suitor in controversies between it and citizens of other States.

Clark *v.* Barnard, 108 U. S. 447.
Gunter *v.* Atlantic Coast Line, 200 U. S. 273.
Hagood *v.* Southern, 117 U. S. 52.

In Title Guaranty, etc., Co. *v.* Guernsey (205 Fed. 91) it was held that the Attorney General could not waive the immunity.

[1] The impairment of the obligation of contracts is fully treated under Art. I, sec. 10, p. 277.

State Institution Having Power to Sue and Be Sued

Where a State institution has been incorporated with power to sue and be sued, the sovereign has consented that, in so far as it is represented by the governing body of the institution, it may be sued.

Interstate Constr. Co. *v.* Regents, 199 Fed. 509.

A suit against a State agriculture college for damages resulting from its corporate act in building for its own proprietary and corporate purposes a dyke which it is alleged damaged or took the plaintiff's farm is not within this amendment as a suit against the State.

Hopkins *v.* Clemson College, 221 U. S. 636.

Suit Against State in United States Court

Even if a State has consented to be sued in its own courts by one of its creditors, a right would not exist in such creditor to sue the State in a court of the United States.

Murray *v.* Wilson Distilling Co., 213 U. S. 151.
Chandler *v.* Dix, 194 U. S. 590.
Smith *v.* Reeves, 178 U. S. 436.

Effect of Waiver in Previous Similar Suit

There is no waiver of immunity from suit in a particular case from the fact that the State had previously appeared in and had defended a similar suit against the same State officers.

Farish *v.* Oklahoma, 235 U. S. 498.

As to the right of a State to intervene in a suit, see—

U. S. *v.* Peters, 5 Cranch 115.
Georgia *v.* Brailsford, 2 Dall. 402.
And see—
Port Royal, etc., R. Co. *v.* South Carolina, 60 Fed. 552, as to cross-bill in suit by the State.

Objection to Jurisdiction

While a suit directly against a State by name would be so palpably in violation of this amendment that the court would probably be justified in dismissing it on motion, an objection that a suit against a State officer was in effect against the State went to the merits of the case and even if it went to the jurisdiction it should not be raised by motion to dismiss, but by demurrer or other pleading.

Illinois Cent. R. Co. *v.* Adams, 180 U. S. 28.
Scully *v.* Bird, 209 U. S. 481.

AMENDMENT 12.[1]—ELECTION OF PRESIDENT.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such

[1] This amendment supersedes the original clause 3 of section 1 of Article II. For ratification see p. 27.

number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

The State acts individually through its electoral college, although, by reason of the power of its legislature over the manner of appointment, the vote of its electors may be divided. In case of election by the House of Representatives, the State acts as a unit and its vote is given as a unit, but that vote is arrived at through the votes of its Representatives in Congress elected by districts.

McPherson *v.* Blacker, 146 U. S. 27.

The electors are those persons elected in each State to cast the vote of the State for President and Vice President, and their only function is to cast, certify, and transmit the vote of the State. Each State is entitled to as many electors as it has Senators and Members of the House of Representatives. They are elected by the voters of each State on the same day on which the people vote for President and Vice President. The Constitution does not prescribe any qualifications for an elector. But it provides that neither a Senator nor a Representative in Congress nor any person holding an office of trust or profit under the United States shall be an elector. These are the only persons whom the Constitution disqualifies from holding this position. But an elector must have the qualifications of a voter under the State statute.

Pope *v.* Williams, 193 U. S. 621.

The electors are not officers of the United States and Congress has not undertaken to interfere with the election or appointment of electors but has left such matters to State control, and the State courts have jurisdiction of an indictment for illegal voting for presidential electors.

In re Green, 134 U. S. 377.

AMENDMENTS 13–15.—CIVIL WAR AMENDMENTS.

Amendment 13.—SLAVERY.[1]

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

Slavery and Involuntary Servitude Prohibited

In General

The meaning of this is as clear as language can make it. The things denounced are slavery and involuntary servitude, and Congress is given power to enforce that denunciation. All understand by these terms a condition of enforced compulsory service of one to another. While the inciting cause of the amendment was the emancipation of the colored race, yet it is not an attempt to commit that race to the care of the Nation. It is the denunciation of a condition and not a declaration in favor of a particular people. It reaches every race and every individual, and if in any respect it commits one race to the Nation it commits every race and every individual thereof. Slavery or involuntary servitude of the Chinese, of the Italian, of the Anglo-Saxon are as much within its compass as slavery or involuntary servitude of the African.

Hodges *v.* U. S., 203 U. S. 1, in which it was held that Revised Statutes, sections 1977, 1978, 1979, 5508, and 5510 gave the United States courts no jurisdiction of a charge of conspiracy within a State to prevent citizens of African descent from making or carrying out contracts to labor.

See also—

Civil Rights Cases, 109 U. S. 24.

Slaughterhouse Cases, 16 Wall. 69.

Selective Service Law

The selective service act of May 18, 1917, does not contravene this amendment, a soldier not being a slave.

Story *v.* Perkins, 243 Fed. 997, judgment affirmed in Jones *v.* Perkins, 245 U. S. 390.

Selective Draft Law Cases, 245 U. S. 366.

Prohibiting Tenant Leaving During Term of Lease

A State statute which makes it a penal offense where a person who has contracted to labor for or serve another for any given time in the cultivation of land, to leave or abandon the contract,

[1] For ratification, see p. 28.

was held to be unconstitutional. It is an attempt to establish a system of peonage, and uses the arm of the law to keep persons in a condition of peonage whenever they abandon the leased premises by coercing performance of the obligation of contracts of labor by involuntary servitude.

Peonage Cases, 123 Fed. 671.
Franklin *v.* South Carolina, 218 U. S. 161.

As to fraudulent breach of contract of employment, see—

Bailey *v.* Alabama, 219 U. S. 219.

Recognition of Distinction Between Races

A State statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or reestablish a state of involuntary servitude.

Plessy *v.* Ferguson, 163 U. S. 543.

Rearrest of Convicted Person for Failure to Work Out Fine and Costs

A State statute which authorizes a person convicted of crime to work out the fine and costs with one who has become surety therefor, and which provides that the contract must be kept, under pain of rearrest, and another similar proceeding for its violation, and thus under pain of recurring prosecutions rendering him liable to be kept at labor to satisfy the demands of his employer, is invalid.

U. S. *v.* Reynolds, 235 U. S. 133.

Requiring Labor for Repair of Public Highways

A statute which requires every able-bodied male person between the ages of 21 and 45 years to work on the roads and bridges for six days in each year, to provide a substitute, or in lieu thereof to pay the overseer the sum of $3, does not impose involuntary servitude within the meaning of this amendment.

Butler *v.* Parry, 240 U. S. 328.

The contract of a seaman is not within the spirit of this amendment.

Robertson *v.* Baldwin, 165 U. S. 281.

Power of Congress

There is no limitation in this amendment confining the prohibition to the State, but it includes everybody within the jurisdiction of the National Government. Congress is therefore authorized by its provisions to legislate against acts of individuals as well as of the States in all matters necessary for the protection of the rights granted by it.

U. S. *v.* Morris, 125 Fed. 322.
Clyatt *v.* U. S., 197 U. S. 216.
Hodges *v.* U. S., 203 U. S. 1.
U. S. *v.* Reynolds, 235 U. S. 133.

Amend. 13.—Slavery.

The denial to any person of admission to the accommodations and privileges of an inn, a public conveyance, or a theater, does not subject that person to any form of servitude, or tend to fasten upon him any badge of slavery within the meaning of this provision, and the act of Congress declaring that in the enjoyment of such accommodations and privileges no distinction shall be made between race or color, or between those who have and those who have not been slaves, finds no sanction in this amendment and is unconstitutional in its entirety.

Civil Rights Cases, 109 U. S. 3.
Baldwin *v.* Franks, 120 U. S. 678.
Butts *v.* Merchants Transp. Co., 230 U. S. 126.

Amendment 14.[1]—RIGHTS OF CITIZENS.

Section 1.—CITIZENSHIP—DUE PROCESS—EQUAL PROTECTION.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Citizenship [2]

Leading Cases

U. S. *v.* Wong Kim Ark, 169 U. S. 649.
Twining *v.* New Jersey, 211 U. S. 78.
Slaughterhouse Cases, 16 Wall. 36.
U. S. *v.* Cruikshank, 92 U. S. 542.
Civil Rights Cases, 109 U. S. 3.
Minor *v.* Happersett, 21 Wall. 162.
Ex parte Siebold, 100 U. S. 371.

Purpose of the Clause

The main object of the opening sentence of this amendment was to settle the question, upon which there had been a difference of opinion throughout the country and in the Supreme Court as to the citizenship of free negroes, and to put it beyond doubt that all persons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and owing no allegiance to any alien power, should be citizens of the United States and of the State in which they reside.

Elk *v.* Wilkins, 112 U. S. 101.
Slaughterhouse Cases, 16 Wall. 73.

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[1] For ratification of this amendment, see p. 29.
[2] See also Art. IV, sec. 2, cl. 1, p. 507.

In U. S. *v.* Wong Kim Ark (169 U. S. 676) it was said:

It is declaratory in form and enabling and extending in effect. Its main purpose doubtless was, as has been often recognized by this court, to establish the citizenship of free negroes, which had been denied in the opinion delivered by Chief Justice Taney in Dred Scott *v.* Sandford (1857) (19 How. 393), and to put it beyond doubt that all blacks, as well as whites, born or naturalized within the jurisdiction of the United States are citizens of the United States. * * * But the opening words "All persons born" are general, not to say universal, restricted only by place and jurisdiction, and not by color or race.

Prohibition on States

In general.—The prohibitions of this section have reference to State action exclusively.

Virginia *v.* Rives, 100 U. S. 318.
Hodges *v.* U. S., 203 U. S. 1.

On all State agencies.—These provisions have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State.

Ex parte Virginia, 100 U. S. 346.
See also—
Home Telephone, etc., Co. *v.* Los Angeles, 227 U. S. 278.
Chicago, etc., R. Co. *v.* Chicago, 166 U. S. 234.
Scott *v.* McNeal, 154 U. S. 45.
Missouri *v.* Dockery, 191 U. S. 165.
Reagan *v.* Farmers' Loan, etc., Co., 154 U. S. 390.
Raymond *v.* Chicago Traction Co., 207 U. S. 20.
Reinman *v.* Little Rock, 237 U. S. 171.
Owensboro Waterworks Co. *v.* Owensboro, 200 U. S. 38.

Not applicable to wrongful action of individuals.—Civil rights, such as are guaranteed by the Constitution against State aggression, can not be impaired by the wrongful act of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his

rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress.

Civil Rights Cases, 109 U. S. 17.
Siler *v.* Louisville, etc., R. Co., 213 U. S. 175.
United Mine Workers *v.* Chafin, 286 Fed. 959.

Applicability to District of Columbia.—It is conceded that the constitutional provision does not purport to extend to authority exercised by the United States, but it does not follow that Congress, in exercising its power of legislation within and for the District of Columbia, may, therefore, deny to persons residing therein the equal protection of the laws.

Lappin *v.* District of Columbia, 22 App. Cas. (D. C.) 68.

Limitations of the First Eight Amendments

Although it has been vigorously asserted that the rights specified in the first eight amendments are among the privileges and immunities protected by the fourteenth amendment, and although this view has been defended by many distinguished jurists, including several justices of the Federal Supreme Court, that court holds otherwise and asserts that is is the character of the right claimed, whether specified as above or not, that is controlling.

Maxwell *v.* Dow, 176 U. S. 581.

Distinction Between Residence and Citizenship

Residence and citizenship are wholly different things within the meaning of the Constitution and the laws defining and regulating the jurisdiction of the circuit court of the United States.

Steigleder *v.* McQuesten, 198 U. S. 143.

Although this amendment declares that citizens of the United States are citizens of the States in which they reside, there may be a temporary residence in one State, with intent to return to another, which will not create citizenship in the former.

Bradwell *v.* Illinois, 16 Wall. 130.

There is nothing in this clause which requires and justifies a rule that "the bare averment of the residence of the parties is sufficient, *prima facie*, to show jurisdiction" when the jurisdiction bears upon the citizenship of the parties.

Robertson *v.* Cease, 97 U. S. 650.

Definition of "Citizen"

In general.—The Constitution nowhere defines the meaning of the word "citizen," either by way of inclusion or exclusion, except in so far as this is done by the affirmative declaration in this amendment. In this respect, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution.

U. S. *v.* Wong Kim Ark, 169 U. S. 654.

In the Constitution and laws of the United States the word "citizen" is generally, if not always, used in a political sense, to designate one who has the rights and privileges of a citizen of a State or of the United States.

Baldwin *v.* Franks, 120 U. S. 690.

In Scott *v.* Sandford (19 How. 393) the judgment of the court was to the effect that a slave of African descent is not a citizen of the State of his domicile in the sense in which the word "citizen" is used in the Constitution, and because of that fact, the negro slave being the plaintiff in error, the suit was dismissed for want of jurisdiction. But it should be noted in this case that seven of the nine judges who sat in this case concurred in the judgment announced by the Chief Justice, but only two—Wayne and Daniel—concurred entirely. All the justices of the majority concurred in the opinion of Justice Nelson, which was originally prepared to stand as the opinion of the court. Of the seven who concurred in the judgment announced by the Chief Justice, only three held that the plea in abatement was open, and hence that the question of the status of free negroes was before the court. Justice Catron held that the plea was not open. Justice Grier evaded the question, and Justices Nelson and Campbell based their opinions on grounds which made it unnecessary to pass upon the question. Of the two dissenting, Justice Curtis held that the plea was before the court and Justice McLean held that it was not. Six judges—Taney, Wayne, Daniel, Grier, Campbell, and Catron—held that the Missouri Compromise was unconstitutional. The historic importance of this case lies in the *dicta* in the announcement of the Chief Justice rather than in the decision of the court that it had no jurisdiction.[1]

Corporation not a citizen.[2]—A corporation is not a citizen within the meaning of this provision, and hence has not "privileges and immunities" secured to citizens against State legislation.

Orient Ins. Co. *v.* Daggs, 172 U. S. 561.
Selover *v.* Walsh, 226 U. S. 112.
Western Turf Assn. *v.* Greenberg, 204 U. S. 359.

Women as citizen.—Women, if born of citizen parents within the jurisdiction of the United States, have always been considered citizens of the United States, as much so before the adoption of this amendment as since.

Minor *v.* Happersett, 21 Wall. 165.

Effect on citizenship of marriage with alien.—Act of Congress which provides "That any American woman who marries a foreigner shall take the nationality of her husband" is valid even as to a woman who, after marriage with a foreigner, remains a resident of this country.

Mackenzie *v.* Hare, 239 U. S. 299.

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[1] Evans' Cases on Constitutional Law, p. 93.
[2] See p. 667—"Corporations."

Distinction Between Citizenship of United States and of a State

The distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

Slaughterhouse Cases, 16 Wall. 73.

For a definition of the clause "subject to the jurisdiction thereof," see—

U. S. *v.* Wong Kim Ark, 169 U. S. 682.
Elk *v.* Wilkins, 112 U. S. 99.
U. S. *v.* Nice, 241 U. S. 591.

Indians as citizens.—An Indian to whom an allotment of land has been made becomes a citizen of the United States and no longer a ward of the Government.

Matter of Heff (197 U. S. 488), in which case the act of Congress of January 30, 1897, making it unlawful to give or sell intoxicating liquors to such Indian, was held unconstitutional under this amendment.

Privileges and Immunities

In General

The prohibition against the abridgment of the privileges and immunities of "citizens of the United States" means only privileges and immunities incident to citizenship of the United States as distinguished from citizenship of the several States. Protection extends only to those privileges and immunities arising out of the nature and essential character of the Federal Government and granted or secured by the Constitution; they are not identical with those referred to in Article IV, section 2, clause 1.

Slaughterhouse Cases, 16 Wall. 74.
Duncan *v.* Missouri, 152 U. S. 382.
Ward *v.* Maryland, 12 Wall. 430.

The purpose of this clause was to confer upon the colored race perfect equality of civil and political rights with whites, and to prevent any person or class from being made the object of discriminating or hostile legislation. But the equality contemplated was not social equality.

Virginia *v.* Rives, 100 U. S. 318.
Ex parte Virginia, 100 U. S. 345.
McPherson *v.* Blacker, 146 U. S. 39.
Plessy *v.* Ferguson, 163 U. S. 544.
See also—
Connor *v.* Elliott, 18 How. 593.
Holden *v.* Hardy, 169 U. S. 366.

Pace *v.* Alabama, 106 U. S. 585.
Powell *v.* Pennsylvania, 127 U. S. 624.

Not a Grant of New Privileges

Nothing more than the rights of the citizens previously existing, and dependent wholly on State laws for their recognition, is placed by this clause under the protection of the Federal Government and secured by the Federal Constitution.

Bartemeyer *v.* Iowa, 18 Wall. 133.
In re Kemmler, 136 U. S. 448.

State Control Over Court Procedure

Regulating right to sue on cause of action arising in another State.—Where a statute in one State gives a right of action to the widow or personal representative for wrongful death in that State, the privileges and immunities of a widow of a citizen of that State who was killed therein, are not abridged by being denied the right to sue on that cause of action in the courts of another State.

Chambers *v.* Baltimore, etc., R. Co., 207 U. S. 142.

Right of asylum against unlawful abduction of fugitives.—The right of asylum in a State to which a fugitive from justice has fled is not a right of privilege or immunity which he can claim as against an unlawful abduction to a State in which an indictment is pending against him.

Mahon *v.* Justice, 127 U. S. 707.

Regulation of juries.—No person charged with a crime involving life or liberty is entitled, by virtue of the Constitution of the United States, to have his race represened upon the grand jury that may indict him or upon the petit jury that may try him. And so far as the Constitution of the United States is concerned, service upon grand and petit juries in the courts of the several States may be restricted to citizens of the United States. It rests with each State to prescribe such qualifications as it deems proper for jurymen, taking care only that no discrimination in respect to such service be made against any class of citizens solely because of their race.

In re Shibuya Jugiro, 140 U. S. 297.

A State statute as construed by the State court to mean that "although a person called as a juryman may have formed an opinion based upon rumor or upon newspaper statements, but has expressed no opinion as to the truth of the newspaper statement, he is still qualified as a juror if he states that he can fairly and impartially render a verdict thereon in accordance with the law and the evidence, and the court shall be satisfied of the truth of such statement," does not abridge the privileges or immunities of citizens.

Spies *v.* Illinois, 123 U. S. 168.

Prohibiting setting aside verdicts.—A statute which forbids the setting aside of a verdict as being against the weight of evidence, when three verdicts upon the facts in favor of the same party

have been rendered, does not amount to an arbitrary deprivation of the rights of the citizen.

Louisville, etc., R. Co. *v.* Woodson, 134 U. S. 623.

Statutes regulating the manufacture and sale of goods do not abridge the privileges and immunities of citizens.

Kidd *v.* Pearson, 128 U. S. 657.
Mugler *v.* Kansas, 123 U. S. 657.
Bartemeyer *v.* Iowa, 18 Wall. 138.
Cronin *v.* Adams, 192 U. S. 114.
Foster *v.* Kansas, 112 U. S. 205.
Crowley *v.* Christensen, 137 U. S. 91.
Giozza *v.* Tiernan, 148 U. S. 661.
Rippey *v.* Texas, 193 U. S. 509.
Gray *v.* Connecticut, 159 U. S. 77.
Lemieux *v.* Young, 211 U. S. 489.
Kidd, etc., Co. *v.* Musselman Gro. Co., 217 U. S. 461.
Natal *v.* Louisiana, 139 U. S. 622.
Rosenthal *v.* New York, 226 U. S. 260.

Relation of Employer and Employee [1]

Regulating hours of labor.—A State statute providing that the period of employment of mine workers shall be eight hours per day, except in case of emergency where life or property is in imminent danger, does not abridge the privileges or immunities of citizens. These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employees, and so long as there are reasonable grounds for believing that this is so, its decision upon this subject can not be reviewed by the Federal courts.

Holden *v.* Hardy, 169 U. S. 380.

Employment of labor on public works.—A statute which provides that "In the construction of public works by the State or a municipality, or by persons contracting with the State or such municipality, only citizens of the United States shall be employed; and in all cases where laborers are employed on any such public works, preference shall be given citizens of the State of New York," does not abridge the privileges and immunities of contractors and those of their alien employees.

Heim *v.* McCall, 239 U. S. 175.
Crane *v.* New York, 239 U. S. 195.

Employers' liability.[2]—A statute making a railroad company liable to its employees for injuries resulting from the negligence of fellow servants and depriving the company of the defense of contributory negligence does not abridge its privileges and immunities under this clause.

Missouri Pac. R. Co. *v.* Castle, 224 U. S. 541.

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[1] See same subject, p. 103, as to Federal regulation.
[2] See also same subject, p. 103.

Practice of Law

The right to admission to practice in the courts of a State is not one of the privileges or immunities belonging to citizens of the United States, and the refusal of a State court to grant a license to a woman to practice law is not within the prohibition of this clause.

Bradwell *v.* Illinois, 16 Wall. 139.
In re Lockwood, 154 U. S. 116.

Right of Suffrage

The Constitution does not define the privileges and immunities of citizens, and the right of suffrage is not one of them. This amendment, the court said in Minor *v.* Happersett (21 Wall. 171)—

did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the Constitution and laws of the States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizen.

See also—
Pope *v.* Williams, 193 U. S. 632.

Negligence

Prohibiting stipulation against negligence in delivery of telegraph message.—A statute prohibiting a stipulation against liability for negligence in the delivery of an interstate message is not invalid as abridging the privileges and immunities of citizens.

Western Union *v.* Commercial Milling Co., 218 U. S. 406.

Liability of mine owner for negligence of licensed manager or engineer.—It is an appropriate exercise of the police power of the State to regulate the use and enjoyment of mining properties, and mine owners are not deprived of their property, privileges, or immunities without due process of law by the Illinois mining statute of 1899, which requires the employment of only licensed mine managers and mine examiners, and imposes upon the mine owners liability for the willful failure of the manager and examiner to furnish a reasonably safe place for the workmen.

Wilmington Star Min. Co. *v.* Fulton, 205 U. S. 60.

Public Speaking

A municipal ordinance providing that "no person shall, in or upon any of the public grounds, make any public address * * * except in accordance with a permit from the mayor," is not void under this amendment, as the power conferred upon the chief executive officer of the city may be fairly claimed to be a mere administrative function vested in the mayor.

Davis *v.* Massachusetts, 167 U. S. 44.

State Taxation[1]

Tax on emigrant agents.—A State law taxing the business of hiring persons to labor outside the State does not restrict the right of a citizen to move from one State to another, and so abridge his privileges and immunities. If it can be said to affect the freedom of egress from the State, or the freedom of contract, it is only incidentally and remotely. The individual laborer is left free to come and go at pleasure, and to make such contracts as he chooses, while those whose business it is to induce persons to enter into labor contracts and to change their location, though left free to contract, are subjected to taxation in respect of their business as other citizens are.

Williams *v.* Fears, 179 U. S. 274.

Tax on passengers.—A State statute imposing a capitation tax upon passengers for the privilege of leaving the State, or passing through it by the ordinary mode of passenger travel, deprives citizens of other States of the right to pass and repass through every part of the United States, as the tax would ultimately fall upon the passengers.

Crandall *v.* Nevada, 6 Wall. 49.

Succession tax.—State law imposing a tax upon transfer before the funds come within the State is not contrary to this amendment.

Blackstone *v.* Miller, 188 U. S. 189.
Orr *v.* Gilman, 183 U. S. 287.

Taxing debt held against nonresident.—The Constitution does not prohibit a State from taxing in the hands of one of its resident citizens a debt held by him upon a resident of another State, and evidenced by the bond of the debtor, secured by deed of trust or mortgage upon real estate situated in the State in which the debtor resides. So long as the State, by its laws prescribing the mode and subjects of taxation, does not intrench upon the legitimate authority of the Union, or violate any right recognized or secured by the Constitution of the United States, the Supreme Court, as between the State and its citizens, can afford him no relief against State taxation, however unjust, oppressive, or onerous.

Kirtland *v.* Hotchkiss, 100 U. S. 498.

Due Process

Leading Cases

In Munn *v.* Illinois (94 U. S. 123, 125) the court said:

The Constitution contains no definition of the word "deprive" as used in the fourteenth amendment. To determine its signification it is necessary to ascertain the effect which usage has given it, when employed in

[1] See also same subject, pp. 74, 180, 315, 362, 366, 600, 636, 707, and 728.

the same or a like connection * * *. Down to the time of the adoption of the fourteenth amendment it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular; it simply prevents the States from doing that which will operate as such a deprivation.

In Twining *v.* New Jersey (211 U. S. 101) the court considered the meaning of the words in the light of their historical origin and drew the following conclusions:

First. What is due process of law may be ascertained by an examination of those settled usages and modes of proceedings existing in the common and statute law of England before the emigration of our ancestors, and shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country.

Second. It does not follow, however, that a procedure settled in English law at the time of the emigration and brought to this country and practised by our ancestors is an essential element of due process of law. If that were so, the procedure of the first half of the seventeenth century would be fastened upon the American jurisprudence like a strait-jacket, only to be unloosed by constitutional amendments.

Third. But, consistently with the requirements of due process, no change in ancient procedure can be made which disregards those fundamental principles, to be ascertained from time to time by judicial action, which have relation to process of law and protect the citizen in his private right, and guard him against the arbitrary action of government.

In Allgeyer *v.* Louisiana (165 U. S. 589) it was said that the liberty mentioned in this amendment means:

Not only the right of a citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.

In Raymond *v.* Chicago Packing Co. (207 U. S. 20) the court said that the fourteenth amendment is not confined to the action of the State through its legislative, its executive, or judicial departments, but covers all the instrumentalities by which the State acts, and whoever by virtue of public position in a State government deprives one of any right protected by the amendment violates it, and if he acts in the name of the State and for the State and is clothed with the State's authority, his act is that of the State.

In Muller *v.* Oregon (208 U. S. 421) it was held:

It is undoubtedly true, as more than once declared by this court, that the general right to contract in relation to one's business is part of the liberty of the individual protected by the fourteenth amendment to the

Federal Constitution, yet it is equally well settled that this liberty is not absolute and extending to all contracts, and that a State may, without conflicting with the provisions of the fourteenth amendment, restrict in many respects the individual's power of contract.

Murray *v.* Hoboken Land, etc., Co., 18 How. 272.
Williams *v.* Feers, 179 U. S. 274.
Urquhart *v.* Brown, 205 U. S. 179.
Ozan Lumber Co. *v.* Union County Bank, 207 U. S. 256.
Heath *v.* Worst, 207 U. S. 338.
Holden *v.* Hardy, 169 U. S. 366.
Lochner *v.* New York, 198 U. S. 45.
Ughbanks *v.* Armstrong, 208 U. S. 481.
Martin *v.* Texas, 200 U. S. 316.
Carroll *v.* Greenwich Ins. Co., 199 U. S. 401.
Jack *v.* Kansas, 199 U. S. 372.
International Harvester Co. *v.* Kentucky, 234 U. S. 216.
Hurtado *v.* California, 110 U. S. 516.
Wadley Southern R. Co. *v.* Georgia, 235 U. S. 651.
Coppage *v.* Kansas, 236 U. S. 1.
Ex parte Wall. 107 U. S. 265.

In Davidson *v.* New Orleans (96 U. S. 97) the court said:

Whenever by the laws of a State or by State authority a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings can not be said to deprive the owner of his property without due process of law.

In Hager *v.* Reclamation District (111 U. S. 708) it was said that this clause means "that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

In Missouri Pac. R. Co. *v.* Humes (115 U. S. 520) the court said:

If the laws enacted by a State be within the legitimate sphere of legislative power, and their enforcement be attended with the observance of those general rules which our system of jurisprudence prescribes for the security of private rights, the harshness, injustice, and oppressive character of such laws will not invalidate them as affecting life, liberty, or property without due process of law.

In Truax *v.* Corrigan (257 U. S. 312) the court considered the relations of this and the equal protection clauses. (Opinion by Chief Justice Taft, p. 331.)

Definition

In general.—The phrase "due process of law" is, in terms, extended to the States by this amendment. As applied to the States the guaranty adds nothing to the right of one citizen against another, but simply prevents any encroachment by the State upon the fundamental rights which belong to every citizen. "Due process of law," as here used refers to the law of the land

in each State, deriving its authority from the inherent and reserved powers of the State, exerted within the limits of the fundamental principles of liberty and justice underlying our civil and political institutions. What is due process of law in the respective States is regulated and determined by the law of each State, and this amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords a fair opportunity to be heard before the issues are decided. The courts will interfere with State action on the ground that it is repugnant to this clause only where fundamental rights have been denied.

Hallinger *v.* Davis, 146 U. S. 320.
U. S. *v.* Cruikshank, 92 U. S. 542.
In re Kemmler, 136 U. S. 448.
Hurtado *v.* California, 110 U. S. 535.
Walker *v.* Sauvinet, 92 U. S. 90.
Iowa Cent. R. Co. *v.* Iowa, 160 U. S. 393.
Allen *v.* Georgia, 166 U. S. 141.
See also—
In re Converse, 137 U. S. 624.
Marchant *v.* Pennsylvania R. Co., 153 U. S. 388.
Hagar *v.* Reclamation Dist., 111 U. S. 708.
Brown *v.* New Jersey, 175 U. S. 175.
Storti *v.* Massachusetts, 183 U. S. 138.

Law, in its regular course of administration through the courts of justice, is due process, and when secured by the law of the State, the constitutional requisite is satisfied. And due process is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice.

Caldwell *v.* Texas, 137 U. S. 697.
Duncan *v.* Missouri, 152 U. S. 382.
Giozza *v.* Tiernan, 148 U. S. 657.
Leeper *v.* Texas, 139 U. S. 467.
Munn *v.* Illinois, 94 U. S. 123.
Smith *v.* Texas, 233 U. S. 630.

The refusal of a witness to appear before a legislative committee, and his arrest in pursuance of an order of attachment issued by the committee, does not present any question of due process of law."

Carfer *v.* Caldwell, 200 U. S. 293.

The fact that a remedy is speedy does not make a failure of due process of law when it can only be enforced by means of orderly proceedings in a court of competent jurisdiction, in accordance with rules and forms established for the protection of the rights of the parties.

Kennard *v.* Louisiana, 92 U. S. 483.

That judges hearing argument called in another to write opinion did not deny any right under this amendment.

Wagner Elec. Co. *v.* Lyndon, 282 Fed. 219.

Synonymous with "law of the land."—Due process of law in this clause refers to that law of the land in each State which derives its authority from the inherent and reserved powers of the State, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws and alter them at their pleasure.

Hurtado *v.* California, 110 U. S. 535.

Due process of law is process due according to the law of the land. This process in the United States is regulated by the law of the State. The power of the Federal court over that law is only to determine whether it is in conflict with the supreme law of the land; that is to say, with the Constitution and laws of the United States made in pursuance thereof or with any treaty made under the authority of the United States.

Walker *v.* Sauvinet, 92 U. S. 92.
Missouri Pac. R. Co. *v.* Humes, 115 U. S. 519.
Dartmouth College *v.* Woodward, 4 Wheat. 518.
Bank *v.* Okely, 4 Wheat. 235.

That which is appropriate to the particular case.—By "due process" is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either without the observance of those general rules established in our system of jurisprudence for the security of private rights.

Hagar *v.* Reclamation Dist., 111 U. S. 708.

In judging what is "due process of law," respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these; and if found to be suitable or admissible in the special case, it will be adjudged to be "due process of law"; but if found to be arbitrary, oppressive, and unjust, it may be declared to be not "due process of law.

Davidson *v.* New Orleans, 96 U. S. 107.

Not necessarily judicial process.—Due process is not necessarily judicial process. There is no provision in the Federal Constitution which forbids a State from granting to a tribunal, whether

called a court or a board of registration, the final determination of a legal question.

Reetz *v.* Michigan, 188 U. S. 507.
Palmer *v.* McMahon, 133 U. S. 668.
Ballard *v.* Hunter, 204 U. S. 241.
Murray *v.* Hoboken Land, etc., Co., 18 How. 272.
Kelly *v.* Pittsburgh, 104 U. S. 78.
Ex parte Wall, 107 U. S. 265.

Ascertained by process of judicial inclusion and exclusion.—The meaning of the term "due process of law" should be ascertained by the actual process of judicial inclusion or exclusion, as the cases presented for decision require, with the reasoning on which such decisions shall be founded.

Davidson *v.* New Orleans, 96 U. S. 104.
Twining *v.* New Jersey, 211 U. S. 78.
Kentucky R. R. Tax Cases, 115 U. S. 330.

By reference to the fifth amendment.—The fourteenth amendment legitimately operates to extend to the citizens and residents of the States the same protection against arbitrary State legislation affecting life, liberty, and property as is offered by the fifth amendment against similar legislation by Congress; but the Federal courts ought not to interfere when what is complained of amounts to the enforcement of the laws of a State applicable to all persons in like circumstances and conditions, and the Federal courts should not interfere unless there is some abuse of law amounting to confiscation of property or deprivation of personal rights.

Hibben *v.* Smith, 191 U. S. 325.
French *v.* Barber, etc., Co., 181 U. S. 329.
Carroll *v.* Greenwich Ins. Co., 199 U. S. 401.
Hurtado *v.* California, 110 U. S. 535.

Limitation on State Action

This amendment does not deprive a State of the power to compel a township, as one of its political subdivisions, to levy and collect taxes for the purpose of paying the amount assessed against such township for the public benefits accruing for the construction of a drain.

Soliah *v.* Heskin, 222 U. S. 522.

A municipal ordinance is to be regarded as in effect a statute of the State, adopted under a power granted it by the State legislature, and hence it is an act of the State within this amendment.

North American Cold Storage Co. *v.* Chicago, 211 U. S. 306.

The protection of the Federal Constitution applies whatever the form in which the legislative power of the State is exerted, whether by a constitution, an act of the legislature, or any act of any subordinate instrumentality of the State exercising delegated legislative authority, like an ordinance of a municipality or an order of a commission.

Standard Scale Co. *v.* Farrell, 249 U. S. 571.

When Constitutional Question Involved

The validity of a statute is drawn in question whenever the power to enact it, as it is by its terms or is made to read by construction, is fairly open to denial, and is denied.

Miller *v.* Cornwall R. Co., 168 U. S. 132.

Questions of State or general law as to titles and rights do not present questions arising under the United States Constitution.

Devine *v.* Los Angeles, 202 U. S. 313.

Who May Invoke Constitutional Right

The constitutionality of a statute can not be assailed without showing that the party questioning it has been or is likely to be deprived of his property without due process of law; a court can not assume to decide the general question whether the statute as to some other person amounts to a deprivation of property.

Tyler *v.* Judges, 179 U. S. 410.

A party has no interest to assert that a statute is unconstitutional because it might be construed so as to cause it to violate the Constitution. His right is limited solely to the inquiry whether in the case which he presents the effect of applying the statute is to deprive him of a constitutional right.

Castillo *v.* McConnico, 168 U. S. 680.
Straus *v.* Foxworth, 231 U. S. 162.
New Orleans *v.* New Orleans Water Works Co., 142 U. S. 88.

Construction of State Constitutions and Statutes

The essentials of due process of law should be distinguished from matters which may or may not be essential under the terms of a State assessing or taxing law. In Castillo *v.* McConnico (168 U. S. 683) the court said:

> The two are neither correlative or coterminous. The first, due process of law, must be found in the State statute, and can not be departed from without violating the Constitution of the United States. The other depends on the lawmaking power of the State, and as it is solely the result of such authority may vary or change as the legislative will of the State sees fit to ordain. It follows that, to determine the existence of the one, due process of law is the final province of this court, whilst the ascertainment of the other, that is, what is merely essential under the State statute, is a State question within the final jurisdiction of courts of last resort of the several States.

See also—
Price *v.* Illinois, 238 U. S. 446.
Preston *v.* Chicago, 226 U. S. 447.
McCaughey *v.* Lyall, 224 U. S. 558.
Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.
Londoner *v.* Denver, 210 U. S. 373.
French *v.* Taylor, 199 U. S. 274.
Gasquet *v.* Lapeqre, 242 U. S. 367.
Thompson *v.* Kentucky, 209 U. S. 340.
Orr *v.* Gilman, 183 U. S. 283.
Baltimore Traction Co. *v.* Baltimore Belt R. Co., 151 U. S. 137.
Scott *v.* McNeal, 154 U. S. 45.

Seattle, etc., R. Co. *v.* Washington, 231 U. S. 568.
King *v.* West Virginia, 216 U. S. 92.
International Harvester Co. *v.* Kentucky, 234 U. S. 216.
Plymouth Coal Co. *v.* Pennsylvania, 232 U. S. 531.

Rulings of State Courts

In general.—The due-process clause does not take up the laws of the several States and make all questions pertaining to them constitutional questions, nor does it enable the United States Supreme Court to revise the decisions of the State courts upon questions of State law.

Enterprise Irrigation Dist. *v.* Canal Co., 243 U. S. 157.
McCaughey *v.* Lyall, 224 U. S. 558.
Waters-Pierce Oil Co. *v.* Texas, 212 U. S. 86.

In general the decision of a court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the fourteenth amendment merely because it is wrong or because earlier decisions are reversed.

Patterson *v.* Colorado, 205 U. S. 461.
Tidal Oil Co. *v.* Flanagan, 263 U. S. 444.
See also—
In re Converse, 137 U. S. 624.
Howard *v.* Kentucky, 200 U. S. 164.
O'Neil *v.* Northern Colo., etc., Co., 242 U. S. 20.
But see—
Green Bay, etc., Canal Co. *v.* Patten Paper Co., 172 U. S. 58, in which it was held that when by the judgment of a State court there was drawn into question the validity of an authority exercised under the United States, and the decision was erroneously against such authority, there has been a deprivation of property without due process of law.

When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of the State court does not deprive the unsuccessful party of his property without due process of law.

Central Land Co. *v.* Laidley, 159 U. S. 112.
Bonner *v.* Gorman, 213 U. S. 86.
Delmar Jockey Club *v.* Missouri, 210 U. S. 324.
Tracy *v.* Ginzberg, 205 U. S. 170.
Arrowsmith *v.* Harmoning, 118 U. S. 194.
Morley *v.* Lake Shore, etc., R. Co., 146 U. S. 171.

Error in deciding what common law is.—A State has the right to alter the common law at any time, although it has theretofore adopted it with certain limitations. If, through its courts, it err in deciding what the common law is, yet if no fundamental and absolutely all-important right be thereby denied to an accused, he still has due process of law, and he can not complain to the Federal court regarding the error, assuming, of course, that the decision did not conflict with some specific provision of the Federal Constitution.

West *v.* Louisiana, 194 U. S. 258.

On matters of practice.—A decision upon a matter of practice under the State procedure does not draw in question any right under this provision.

Thorington *v.* Montgomery, 147 U. S. 492.
Ballard *v.* Hunter, 204 U. S. 258.
Cross *v.* North Carolina, 132 U. S. 140.
Simon *v.* Craft, 182 U. S. 436.
Stevens *v.* Nichols, 157 U. S. 371.
Sawyer *v.* Piper, 189 U. S. 157.
Iowa Cent. R. Co. *v.* Iowa, 160 U. S. 393.
Rothschild *v.* Knight, 184 U. S. 334.

Statutes of limitation.—The legislature may prescribe a limitation for the bringing of suits where none previously existed, as well as shorten the time within which suits to enforce existing causes of action may be commenced, provided, in each case, a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of suit before the bar takes effect.

Wheeler *v.* Jackson, 137 U. S. 255.
Turner *v.* New York, 168 U. S. 94.
Saranac Land, etc., Co. *v.* Comptroller, 177 U. S. 318.
Barrett *v.* Holmes, 102 U. S. 655.
Soper *v.* Lawrence Bros. Co., 201 U. S. 359.
Kaukauna Water Co. *v.* Green Bay, etc., Co., 142 U. S. 280.

As to removal of the bar of the statute of limitation, see—

Campbell *v.* Holt, 115 U. S. 623.

Person

In general.—The meaning of the word "person" as used in this amendment is not to be restricted by the definition of the word "citizens" in the first clause. "Person" is to be taken in its broadest significance, and includes all individuals within the United States regardless of race, color, or nationality.

Yick Wo *v.* Hopkins, 118 U. S. 356.
Chy Lung *v.* Freeman, 92 U. S. 275.
Neal *v.* Delaware, 103 U. S. 370.
Soon Hing *v.* Crowley, 113 U. S. 703.

Corporations.—Corporations are persons within the meaning of this amendment.

Covington, etc., Road Co. *v.* Sandford, 164 U. S. 592.
Lake Shore, etc., R. Co. *v.* Smith, 173 U. S. 690.
Gulf, etc., R. Co. *v.* Ellis, 165 U. S. 154.
Home Ins. Co. *v.* New York, 134 U. S. 606.
Missouri Pac. R. Co. *v.* Mackay, 127 U. S. 209.
Western Turf Assn. *v.* Greenberg, 204 U. S. 359.
Northwestern, etc., Ins. Co. *v.* Riggs, 203 U. S. 243.

The reserved right of a State to amend corporate charter can not be so exercised as to take property of corporation without due process of law.

Chicago, etc., R. Co. *v.* Wisconsin, 238 U. S. 491.

Except in matters of interstate commerce, a State may undoubtedly prescribe the conditions on which a foreign corporation shall be permitted to do business within it, and may include

therein a provision with regard to the service of process on its agents. Where, therefore, a foreign corporation does business in such State, it will be presumed to have assented to these terms. But it is essential in every case in which personal jurisdiction over such a corporation is claimed that there shall have been an actual and substantial transaction of business by it within the State, and the process by which jurisdiction is sought to be obtained must have been served on one who is truly representative of the corporation.

Frawley *v.* Pennsylvania Casualty Co., 124 Fed. 262.
Lafayette Ins. Co. *v.* French, 18 How. 404.
St. Clair *v.* Cox, 106 U. S. 350.

A statute incorporating a State fraternal organization of the same name as that of a local organization which held its charter from a foreign corporation does not violate this amendment.

National Council *v.* State Council, 203 U. S. 151.

Aliens.—"Any person" includes aliens.

Truax *v.* Raich, 239 U. S. 33.
Disconto Gesellschaft *v.* Umbreit, 208 U. S. 570.

Deprivation

The Constitution contains no definition of the word "deprivation." To determine its significance, therefore, it is necessary to ascertain the effect which usage has given it when employed in the same or any like connection.

Munn *v.* Illinois, 94 U. S. 123.

A taking of railroad property under administrative regulation must be tested by considering whether in view of all the facts the taking was arbitrary and unreasonable or was justified by the public necessities which the carrier could lawfully be compelled to meet.

Washington *v.* Fairchild, 224 U. S. 510.
Great Northern R. Co. *v.* Minnesota, 238 U. S. 340.

Life and Liberty

In general.—This amendment does not limit the power of the States to deal with crimes but merely prevents particular persons or classes from being deprived of equal and impartial justice under the law, and where proceedings are conducted in the ordinary forms of criminal prosecutions in the State there is no denial of due process of law.

Caldwell *v.* Texas, 137 U. S. 697.
Miller *v.* Texas, 153 U. S. 539.
Bergemann *v.* Backer, 157 U. S. 658.
Minder *v.* Georgia, 183 U. S. 559.
Frank *v.* Mangum, 237 U. S. 309.

The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly free from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist

with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.

Jacobson *v.* Massachusetts, 197 U. S. 26.
Allgeyer *v.* Louisiana, 165 U. S. 589.
Smith *v.* Texas, 233 U. S. 630.
Patterson *v.* Colorado, 205 U. S. 454.
Williams *v.* Fears, 179 U. S. 270.
Otis *v.* Parker, 187 U. S. 606.
Patterson *v.* The *Eudora*, 190 U. S. 169.
Aikens *v.* Wisconsin, 195 U. S. 194.
Smiley *v.* Kansas, 196 U. S. 447.
McLean *v.* Arkansas, 211 U. S. 539.
Grenada Lbr. Co. *v.* Mississippi, 217 U. S. 433.
House *v.* Mayes, 219 U. S. 270.

Right to contract.—The general right to make a contract in relation to his business is part of the liberty of the individual protected by this clause.

Lochner *v.* New York, 198 U. S. 53.
Coppage *v.* Kansas, 236 U. S. 1.
Chicago, etc., R. Co. *v.* McGuire, 219 U. S. 549.

But this amendment does not guarantee to a citizen the right to contract, either by himself or agent, within his State, in violation of its laws.

Hooper *v.* California, 155 U. S. 648.

Freedom from arbitrary restraint.—The liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint, not immunity from reasonable regulation to safeguard the public interest.

Miller *v.* Wilson, 236 U. S. 373.
Knoxville Iron Co. *v.* Harbison, 183 U. S. 22.

Compulsory arbitration.—Legislative authority to abridge freedom of contract can be justified only by exceptional circumstances, and the restraint must not be arbitrary or unreasonable. Compulsory arbitration attempted under the Kansas industrial relations act held not justified.

Wolff Co. *v.* Industrial Court, 262 U. S. 522.
Dorchy *v.* Kansas, 264 U. S. 286.

Freedom of speech.—False and malicious misrepresentation of objects and motives of this country in entering war, made for purpose of discouraging recruiting, while war is flagrant are not protected by this amendment, and State law prohibiting teaching of citizens not to aid in prosecution of war is legitimate as a measure of cooperation by State with United States.

Gilbert *v.* Minnesota, 254 U. S. 325.
See also—
Milwaukee Pub. Co. *v.* Burleson, 255 U. S. 407, as to denial of use of mails under espionage act.

Property

Definition.—The "property" protected by this amendment includes not only the thing owned but the right to acquire, use, and dispose of it.

Buchanan *v.* Warley, 245 U. S. 60.

Right to labor.—The right to labor is property, and a person can not be deprived of it by simple mandate of the legislature.

Slaughterhouse Cases, 16 Wall. 36.

Right to contract.—Freedom to contract for personal services is a right protected by this clause.

Prudential Ins. Co. *v.* Cheek, 259 U. S. 530.
Adkins *v.* Children's Hospital, 261 U. S. 525.
Omnia Co. *v.* U. S., 261 U. S. 502.
Radice *v.* New York, 264 U. S. 292.

In Wolff Co. *v.* Industrial Court (262 U. S. 522) the Kansas compulsory arbitration law requiring employers to pay fixed wages and forbidding strikes was held unconstitutional.

See also—
Dorchy *v.* Kansas, 264 U. S. 286.

Right to sue.—A right of action which springs from contract is property within the protection of this clause.

Lamb *v.* Powder River, etc., Co., 132 Fed. 434.
Forbes Pioneer Boat Line *v.* Board of Comrs., 258 U. S. 338.

Reputation as property.—A contention in a State court that reputation is property of which the owner is deprived without due process of law by a decision against his right of action for libelous matter contained in a pleading, raises a Federal question, under Compiled Statutes, sec. 1214, providing for writ of error from the Supreme Court in case of a decision against any constitutional right, privilege, or immunity.

Abbott *v.* Bank, 175 U. S. 409.

Oil or gas in the earth.—Statute prohibiting the flow of oil or gas from a well into the open air without being confined within the well or in proper pipes or other safe receptacles for more than two days next after gas or oil shall have been struck did not take the private property of the owners of the land without due process of law, since the owner of the surface had no property right in the gas or oil until he had actually reduced it to possession, or only a property right in common with the rights of other landowners.

Ohio Oil Co. *v.* Indiana, 177 U. S. 190.

Land adjacent to tidal stream.—No vested rights of owners of land adjacent to a tidal stream were disturbed by statute granting to the city of Mobile so much of the shore and soil under such stream as is within the city boundaries, since such act amounts to no more than a declaration that the rights possessed by the State in such shore and soil were granted to such city.

Mobile Transp. Co. *v.* Mobile, 187 U. S. 479.

Gas mains under city streets.—A gas company has no such property right in the location of its pipes and mains laid under an exclusive franchise to supply gas to the city and its inhabitants, as to make the imposition upon it of the cost of changes in the location of such pipes and mains, necessitated by the construction of the municipal drainage system under State statute, a taking of property without due process.

New Orleans Gaslight Co. *v.* New Orleans, 197 U. S. 453.

Corporate name.—No existing property rights are taken without due process of law by a State statute incorporating a local benevolent society with the same name as that of a voluntary State association whose charter had been withdrawn.

National Council *v.* State Council, 203 U. S. 151.

License.—The police board of Boston, by issuing a liquor license, on a vacancy created by bankruptcy, to the nominee of the trustee in bankruptcy of the original licensees, does not deprive a colicensee, to whom the original license had been assigned as security, of property without due process of law, where his so-called property right depends wholly upon the practice of the board to reissue licenses to the old holders until refused for cause, since the right, being of the board's creation, is subject to any limitations which the board may impose.

Tracy *v.* Ginzberg, 205 U. S. 170.
Gray *v.* Connecticut, 159 U. S. 77.

Statute authorizing a board to grant certificates of registration to qualified persons as certified public accountants and empowering it, upon notice and hearing, to cancel any registration so granted for unprofessional conduct of the certificate holder, held not violative of this clause.

Lehmann *v.* Board of Accountancy, 263 U. S. 394.

Franchise as property.—A ferry franchise is as much property as a rent or any other incorporeal hereditament, or chattels, or realty. It is clothed with the same sanctity and entitled to the same protection as other property.

Conway *v.* Taylor, 1 Black 632.

This was affirmed in—

Louisville, etc., Ferry Co. *v.* Kentucky, 188 U. S. 395.
See also—
Newburyport Water Co. *v.* Newburyport, 193 U. S. 561.
Dobbins *v.* Los Angeles, 195 U. S. 223.
Cleveland El. R. Co. *v.* Cleveland, 204 U. S. 116.
Consumers' Co. *v.* Hatch, 224 U. S. 148.

Incidental injury to property.—In the lawful exercise of municipal authority, the fact that private property is incidentally injured does not amount to a taking of property without due process of law.

Meyer *v.* Richmond, 172 U. S. 82.
Sauer *v.* New York, 206 U. S. 536.
Darling *v.* Newport News, 249 U. S. 540.

Summary destruction of property.—So far as property is inoffensive or harmless it can only be condemned or destroyed by legal proceedings with due notice to the owner; but so far as it is dangerous to the safety or health of the community, due process of law may authorize its summary destruction.

Sentell *v.* New Orleans, etc., R. Co., 166 U. S. 705.
North American, etc., Co. *v.* Chicago, 211 U. S. 306.
Lawton *v.* Steele, 152 U. S. 135.
Perley *v.* North Carolina, 249 U. S. 510.

Public office and officers.—Public office is not property, and the determination of the general assembly as to the right to the office of governor is not open to judicial review.

Taylor *v.* Beckham, 178 U. S. 574.
Kennard *v.* Louisiana, 92 U. S. 483.
Foster *v.* Kansas, 112 U. S. 201.
Wilson *v.* North Carolina, 169 U. S. 592.
Pennie *v.* Reis, 132 U. S. 464.

The prohibition of this amendment extends to the action of anyone who, by virtue of public position under the State government, deprives another of any rights secured by the amendment.

Chicago, etc., R. Co. *v.* Chicago, 166 U. S. 226.
Raymond *v.* Chicago, etc., Co., 207 U. S. 20.
Home Tel., etc., Co. *v.* Los Angeles, 227 U. S. 278.

Police Power[1]

Definition.—In the License Cases (5 How. 504), Chief Justice Taney said:

> But what are the police powers of a State? They are nothing more nor less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law or a law to punish offenses, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same powers; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominions (p. 583).

See also—
Munn *v.* Illinois, 94 U. S. 113.

Discussions of what is called the "police power" are often uninstructive from a lack of discrimination. It is common to recognize that the subject is hardly susceptible of definition, but very often, indeed, it is not perceived that the real question in hand is that grave, difficult, and fundamental matter—what are the limits of legislative power in general? In talking of the police power sometimes the question relates to the limits of a power admitted and fairly well known, as that of taxation or eminent domain; sometimes to the line between the local legislative power of the States and the Federal legislative power;

[1] See also same subject, pp. 146, 309, 672, and 726.

sometimes to legislation as settling the details of municipal affairs, and local arrangements for the promotion of good order, health, comfort, and convenience; sometimes to that special form of legislative action which applies the maxim of *Sic utere tuo ut alienum non laedas*, adjusts and accommodates interests that may conflict, and fixes specific limits for each. But often the discussion turns upon the true limits and scope of legislative power in general, in whatever way it may seek to promote the general welfare. (Thayer, Cases on Constitutional Law, p. 693.)

In general.—The prohibition against deprivation of life, liberty, or property without due process of law does not restrict the power of the States to enact regulations respecting the public health and safety. For the public good individuals must suffer the destruction of property or even life, rights of necessity being part of the law, and the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority essential to the safety, health, peace, good order, and morals of the community. But laws enacted in the purported exercise of the police power must be police regulations in fact; rights of persons and property can not be invaded under the guise of police regulations for the protection of health or good order when it is manifest that such is not the object and purpose of the regulation.

Compagnie Francaise *v.* Louisiana, 186 U. S. 393.
Bowditch *v.* Boston, 101 U. S. 18.
Crowley *v.* Christensen, 137 U. S. 89.
In re Jacobs, 98 N. Y. 98; 50 Am. Rep. 636.

The regulation of trade, business, or profession is within the domain of the police power; such regulation may more or less restrict liberty or impair the value of property, but if reasonably calculated to produce the end contemplated is constitutional.

Soon Hing *v.* Crowley, 113 U. S. 708.
Gundling *v.* Chicago, 177 U. S. 188.
Nutting *v.* Massachusetts, 183 U. S. 553.

The housing shortage in New York justified resort to the police power.

Levy Leasing Co. *v.* Siegel, 258 U. S. 242.

The inhibition upon the deprivation of property without due process of law is not violated by the legitimate exercise of legislative power in securing the public safety, health, and morals.

New York, etc., R. Co. *v.* Bristol, 151 U. S. 567.
Atlantic Coast Line *v.* Goldsboro, 232 U. S. 548.
House *v* Mayes, 219 U. S. 270.
Watson *v.* Maryland, 218 U. S. 173.
Western Turf Assn. *v.* Greenberg, 204 U. S. 359.
California Reduction Co. *v.* Sanitary, etc., Works, 199 U. S. 306.
In re Converse, 137 U. S. 631.
Missouri Pac. R. Co. *v.* Humes, 115 U. S. 520.
Chicago, etc., R. Co. *v.* Illinois, 200 U. S. 561.

In re Kemmler, 136 U. S. 448.
Schmidinger *v.* Chicago, 226 U. S. 578.
Barrett *v.* Indiana, 229 U. S. 26.
Bacon *v.* Walker, 204 U. S. 311.
Gardner *v.* Michigan, 199 U. S. 325.
Hutchinson *v.* Valdosta, 227 U. S. 303.
Murphy *v.* California, 225 U. S. 623.
Sullivan *v.* Shreveport, 251 U. S. 169.
Pacific Gas, etc., Co. *v.* Police Ct., 251 U. S. 22.

The police power of a State extends over the Federal public domain, at least where there is no congressional legislation on the subject.

Omaechevarria *v.* Idaho, 246 U. S. 343.

A State legislature is not the final judge of the limitations of the police power, and its enactments are subject to judicial review and will be set aside when unwarranted and arbitrarily interfering with rights protected by the Constitution in carrying on a lawful business or making contracts for the use and enjoyment of property.

New York *v.* Hesterberg, 211 U. S. 31.

Laws enacted within the police power may be annulled where they are arbitrary or oppressive.

McLean *v.* Arkansas, 211 U. S. 539.

Under this amendment the restriction of liberty or of property rights can not be denominated public welfare and treated as a legitimate object of the police power.

Coppage *v.* Kansas, 236 U. S. 1.

Under this amendment the Supreme Court can not supervise State legislation in the exercise of the police power beyond protesting against laws of an arbitrary character having no reasonable relation to the execution of lawful purposes.

Jones *v.* Portland, 245 U. S. 217.

Railroad companies.[1]—*In general.*—The court said in Atlantic Coast Line *v.* North Carolina (206 U. S. 19):

> The elementary proposition that railroads, from the public nature of the business by them carried on, and the interest which the public have in their operation, are subject, as to their State business, to State regulation, which may be exerted either directly, by the legislative authority, or by administrative bodies endowed with power to that end, is not and could not be successfully questioned, in view of the long line of authorities sustaining that doctrine.

The above proposition is not incompatible with the principle that railway property is susceptible of private ownership, and that rights in and to such property securely rest under the constitutional guaranties by which all private property is protected.

Missouri Pac. R. Co. *v.* Kansas, 216 U. S. 262.

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[1] See Art. I, sec. 8, cl. 3, for Federal regulation of interstate and foreign commerce, p. 83.

A statute providing for the supervision of railroads by a railroad commission does not so attempt to take the management of the property away from the owners as to deprive them of property without due process of law.

Railroad Commission Cases, 116 U. S. 307.
Southern Pac. Co. *v.* Campbell, 230 U. S. 537.

As to the right of a private corporation operating a railroad in connection with lumber business to discontinue same, see—

Brooks-Scanlon Co. *v.* Louisiana, 251 U. S. 396.

Railroad rates—(*a*) *In general.*—A railroad company can not successfully claim to have been deprived of due process of law in a proceeding for reparation for excessive rates on the ground that there had been no formal issue and no method of requiring the production of evidence, when it appears there were pleadings sufficiently formal, the company was permitted to raise such issues and introduce such evidence as it desired, and there is nothing to show that it suffered for lack of compulsory process against witnesses.

Louisville, etc., R. Co. *v.* Finn, 235 U. S. 601.

State statute which provides that rates recommended and published by the State commission are not simply advisory, but final and conclusive as to what are reasonable charges, without provision for notice and hearing, deprives the railroad company of its right to a judicial investigation by due process of law.

Chicago, etc., R. Co. *v.* Minnesota, 134 U. S. 457.

State rate which does not yield reasonable return upon class of traffic to which it applies is invalid and is not saved by the fact that intrastate business as a whole is remunerative.

Vandalia R. Co. *v.* Schnull, 255 U. S. 113.

The legislature of a State has the power to prescribe the charges of a railroad company for the carriage of persons and merchandise within its limits, in the absence of any provision in the charter of the company constituting a contract vesting in it authority over those matters, subject to the limitation that the carriage is not required without reward or upon conditions amounting to the taking of property for public use without just compensation.

Georgia R., etc., Co. *v.* Smith, 128 U. S. 179.
See also—
Minnesota Rate Cases, 230 U. S. 352.
Louisville, etc., R. Co. *v.* Garrett, 231 U. S. 298.
Missouri Pac. R. Co. *v.* Tucker, 230 U. S. 340.
Munn *v.* Illinois, 94 U. S. 134.
Peik *v.* Chicago, etc., R. Co., 94 U. S. 178.
Winona, etc., R. Co. *v.* Blake, 94 U. S. 180.
Portland R. Co. *v.* Oregon, 229 U. S. 397.
Alabama, etc., R. Co. *v.* Mississippi, 203 U. S. 496.
Groesbeck *v.* Duluth, etc., R. Co., 250 U. S. 607.

(*b*) *Rates in aid of development of local industry.*—A statute fixing a rate for the transportation of a commodity under which, taking the results of the business to which the rate is applied, the carrier is compelled to transport the commodity for less than cost, or without substantial compensation in addition to cost, is invalid, and can not be justified as being imposed to aid in the development of a local industry.

Northern Pac. R. Co. *v.* North Dakota, 236 U. S. 585.
Seaboard Air Line *v.* Florida, 203 U. S. 261.

(*c*) *Rebates to tap lines.*—A trunk-line railway has no right under this clause to build up its business by paying tap-line railroads bonuses or rebates forbidden by statute.

O'Keefe *v.* U. S., 240 U. S. 294.

(*d*) *Free transportation.*—A statute requiring street railway companies to grant free transportation to police officials while engaged in the performance of their public duties, as applied to city detectives not in uniform, is not an arbitrary or unreasonable exercise of the police power.

Sutton *v.* New Jersey, 244 U. S. 258.

(*e*) *Passenger fares.*—A statute regulating passenger fares within the State can not be held, as a matter of law, to be unconstitutional.

Chicago, etc., R. Co. *v.* Wellman, 143 U. S. 342.
Lake Shore, etc., R. Co. *v.* Smith, 173 U. S. 684.
Interstate, etc., R. Co. *v.* Massachusetts, 207 U. S. 79.
St. Louis, etc., R. Co. *v.* Williams, 251 U. S. 63.

(*f*) *Reasonableness.*—Legislation establishing a tariff of rates which is so unreasonable as practically to destroy the value of the property of the companies engaged in the carrying business deprives the companies of their property without due process of law.

St. Louis, etc., R. Co. *v.* Gill, 156 U. S. 657.
Northern Pac. R. Co. *v.* North Dakota, 236 U. S. 585.
Chicago, etc., R. Co. *v.* Minnesota, 134 U. S. 458.
Lake Shore, etc., R. Co. *v.* Smith, 173 U. S. 687.
Louisville, etc., R. Co. *v.* Garrett, 231 U. S. 298.
Detroit, etc., R. Co. *v.* Fletcher Paper Co., 248 U. S. 30.

(*g*) *Carrier must be permitted to earn just compensation.*—A State enactment establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public would deprive such carrier of its property without due process of law.

Smyth *v.* Ames, 169 U. S. 526.
See also—
Wood *v.* Vandalia R. Co., 231 U. S. 1.
Allen *v.* St. Louis, etc., R. Co., 230 U. S. 553.
Missouri Rate Cases, 230 U. S. 474.

Missouri Pac. R. Co. *v.* Tucker, 230 U. S. 340.
Dow *v.* Beidelman, 125 U. S. 690.
Reagan *v.* Mercantile Trust Co., 154 U. S. 412.
Chicago, etc., R. Co. *v.* Tompkins, 176 U. S. 167.
Norfolk, etc., R. Co. *v.* Conley, 236 U. S. 605.
Groesbeck *v.* Duluth, etc., R. Co., 250 U. S. 607.

(*h*) *Relation of rates to value of property.*—In determining whether rates are confiscatory because not yielding a proper return, the basis of calculation is the fair value of the property used in the service of the public.

Darnell *v.* Edwards, 244 U. S. 564.
Northern Pac. R. Co. *v.* North Dakota, 236 U. S. 585.

(*i*) *Relation of rates to value of service.*—Rates should be exacted with reference to the fair value of the services rendered and not simply that the corporation may meet its expenses. If a railroad has bonded its property for an amount that exceeds its fair value it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation.

Smyth *v.* Ames, 169 U. S. 544.

(*j*) *Rates compensatory as to entire line.*—The question whether a prescribed maximum rate is confiscatory does not depend upon whether the rate is compensatory as to part of the system, but the correct test is as to the effect of the act on the entire line.

Puget Sound Traction Co. *v.* Reynolds, 244 U. S. 574.

(*k*) *Rates for long and short hauls.*—A State, by enacting a rule of action for railroad companies, forbidding a greater rate for a shorter than for a longer distance, does not deprive a railroad of its property without due process of law.

Louisville, etc., R. Co. *v.* Kentucky, 183 U. S. 512.
Missouri Pac. R. Co. *v.* McGrew Coal Co., 244 U. S. 191.
Louisville, etc., R. Co. *v.* U. S., 245 U. S. 463.

Right to discontinue operation.—Apart from statute or express contract, those who invest in a railroad, though built under charter and eminent domain power, are not bound to go on operating at a loss; the right to stop is not dependent on the consent of the State.

Bullock *v.* Florida, 254 U. S. 513.
Railroad Comm. *v.* Eastern Texas R. R., 264 U. S. 79.

Penalties and forfeitures.—Statute providing that a railroad company, failing to keep its track fenced as specified, shall be liable in double the amount of all damages occasioned by injuries to stock getting on the track because of defects in the fences, cattle guards, etc., is not unconstitutional as depriving the company of its property without due process of law.

Missouri Pac. R. Co. *v.* Humes, 115 U. S. 512.
Minneapolis, etc., R. Co. *v.* Beckwith, 129 U. S. 26.
Chicago etc., R. Co. *v.* Cram, 228 U. S. 70.

Kansas City Sou. R. Co. *v.* Anderson, 233 U. S. 325.
Yazoo, etc., R. Co. *v.* Jackson Vinegar Co., 226 U. S. 217.
Wadley Sou. R. Co. *v.* Georgia, 235 U. S. 651.

The imposition of a liability of $500 and attorney's fees for every excessive charge by a carrier for the shipment of oil between points in the State takes property without due process of law.

Missouri Pac. R. Co. *v.* Tucker, 230 U. S. 340.
Chicago, etc., R. Co. *v.* Polt, 232 U. S. 165.
St. Louis, etc., R. Co. *v.* Wynne, 224 U. S. 354.
Chicago, etc., R. Co. *v.* Kennedy, 232 U. S. 626.

Statute imposing reasonable penalties on carriers for nonpayment of claims held valid.

Chicago, etc., R. Co. *v.* Nye-Schneider-Fowler Co., 260 U. S. 35.

Statute providing that claims for loss and damage shall be paid or rejected by carriers within 90 days, but imposing no penalties, does not violate this section.

Southern R. Co. *v.* Clift, 260 U. S. 316.

Liability of railroad for injury to postal clerk.—Statute making a railroad company liable for injury to a railway postal clerk as if he were an employee of the railroad and not as a passenger does not deprive an injured employee of any property right within the meaning of this clause.

Martin *v.* Pittsburg, etc., R. Co., 203 U. S. 284.

As to injury to persons or property as prima facie evidence of lack of skill on part of employees, see—

Mobile, etc., R. Co. *v.* Turnipseed, 219 U. S. 35.

Connecting carriers.—A statute making connecting carriers agents of each other on a contract for through carriage, and authorizing suit for loss or damage to property to be brought against either of such connecting carriers, the carrier so held liable being entitled to recover the amount it may be required to pay from the carrier through whose negligence the loss or damage was sustained, is valid.

Atlantic Coast Line *v.* Glenn, 239 U. S. 388.
Michigan Cent. R. Co. *v.* Michigan, 236 U. S. 615.
Grand Trunk R. Co. *v.* Michigan, 231 U. S. 457.
Seaboard Air Line *v.* Georgia, 240 U. S. 324.
Washington *v.* Fairchild, 224 U. S. 510.
Louisville, etc., R. Co. *v.* Central Stock Yards Co., 212 U. S. 132.
Chicago, etc., R. Co. *v.* Iowa, 233 U. S. 334.
St. Louis, etc., R. Co. *v.* Arkansas, 240 U. S. 518.

Requiring construction of side track or switch.—A statute requiring a railway company to construct and maintain, at its own expense, a side track or switch necessary to reach a grain

elevator erected adjacent to its right of way is invalid, because it does not provide for indemnity for what it requires.

Missouri Pac. R. Co. *v.* Nebraska, 217 U. S. 196.
Lake Erie, etc., R. Co. *v.* State, 249 U. S. 422.
Chicago, etc., R. Co. *v.* Ochs, 249 U. S. 416.
Chicago, etc., R. Co. *v.* Minneapolis, etc., Assn., 247 U. S. 490.
Louisiana *v.* Morgan's Co., 264 U. S. 393.

Railroad right of way for telegraph line.—Congressional legislation has not deprived the States of power to condemn for the use of a telegraph company a part of the right of way of an interstate road or bridge over navigable waters.

Louisville, etc., R. Co. *v.* Western Union, 250 U. S. 363.

Regulating use of sleeping cars.—A statute imposing a penalty upon sleeping car companies if, the lower berth being occupied, the upper berth is let down before it is actually engaged, deprives the carrier of property without due process of law.

Chicago, etc., R. Co. *v.* Wisconsin, 238 U. S. 491.

Miscellaneous regulations.—Under its reserved powers a State may make any regulation for the operation of railroads within the State so long as it does not result in the taking of property without due process of law forbidden by this amendment, and does not conflict with Federal regulations.

Chicago, etc., R. Co. *v.* Minneapolis, 232 U. S. 430.
Northern Pac. R. Co. *v.* Puget Sound, 250 U. S. 332.
Great Northern R. Co. *v.* Minnesota, 246 U. S. 434.
Missouri Pac. R. Co. *v.* Mackey, 127 U. S. 205.
Minneapolis, etc., R. Co. *v.* Herrick, 127 U. S. 210.
Martin *v.* Pittsburg, etc., R. Co. 203 U. S. 284.
Chicago, etc., R. Co. *v.* McGuire, 219 U. S. 549.
Erie R. Co. *v.* Solomon, 237 U. S. 427.
Houston, etc., R. Co. *v.* U. S., 234 U. S. 342.
Smith *v.* Texas, 233 U. S. 630.
Mississippi *v.* Mobile, etc., R. Co., 244 U. S. 388.
Missouri Pac. R. Co. *v.* Kansas, 216 U. S. 262.
Gladson *v.* Minnesota, 166 U. S. 427.
Chesapeake, etc., R. Co. *v.* Commission, 242 U. S. 603.
New York, etc., R. Co. *v.* Bristol, 151 U. S. 568.
Erie R. Co. *v.* New Jersey, 254 U. S. 394.
Nashville, etc., R. Co. *v.* Alabama, 128 U. S. 101.
Lake Shore, etc., R. Co. *v.* Clough, 242 U. S. 375.
Missouri Pac. R. Co. *v.* Omaha, 235 U. S. 121.
Chicago, etc., R. Co. *v.* Nebraska, 170 U. S. 77.
Chicago, etc., R. Co. *v.* Tranbarger, 238 U. S. 67.
Richmond, etc., R. Co. *v.* Richmond, 96 U. S. 529.
Atlantic Coast Line *v.* Goldsboro, 232 U. S. 548.
Chicago, etc., R. Co. *v.* Chicago, 166 U. S. 255.
Cincinnati, etc., R. Co. *v.* Connersville, 218 U. S. 336.
West Chicago, etc., R. Co. *v.* Illinois, 201 U. S. 506.

Street railways.—An order of a railroad commission requiring a street railway to double track its line for a specified distance will be sustained when it does not present a clear case

of unreasonable, arbitrary, or confiscatory action on the part of the commission.

Phoenix R. Co. *v.* Geary, 239 U. S. 277.
Paducah *v.* Paducah Ry., 261 U. S. 267.
See also—
Milwaukee El. R. Co. *v.* Wisconsin, 252 U. S. 100, as to contractual duty and financial status.
Detroit United Ry. *v.* Detroit, 229 U. S. 39;
Cleveland, etc., R. Co. *v.* Cleveland, 204 U. S. 116;
Des Moines *v.* Des Moines, etc., R. Co., 214 U. S. 179; and
Detroit United Ry. *v.* Detroit, 255 U. S. 171, as to effect of expiration of franchise.
Puget Sound Traction, etc., Co. *v.* Reynolds, 244 U. S. 574;
Southern Iowa Elec. Co. *v.* Chariton, 255 U. S. 539; and
San Antonio *v.* San Antonio P. S. Co., 255 U. S. 547, as to rates and service.

Statute providing for the operation of a railway by trustees held not unconstitutional under this section.

Boston *v.* Jackson, 260 U. S. 309.

Motor vehicles.—A New York statute requires persons engaged in the business of carrying passengers for hire in motor vehicles upon public streets to file security or insurance for payment of judgments for death or injury to person or property, held not so burdensome as to amount to confiscation.

Packard *v.* Banton, 264 U. S. 140.

Bridge companies.—Requiring company constructing international railroad bridge to add foot and carriage ways, as contemplated by charter, held not to violate this amendment in absence of showing that additions would not yield reasonable returns.

International Brdg. Co. *v.* New York, 254 U. S. 126.

Telegraph and telephone companies—*Liability for negligence.*—A statute prohibiting a stipulation against liability for negligence in the delivery of an interstate message is not invalid as a deprivation of liberty to contract.

Western Union *v.* Commercial Milling Co., 218 U. S. 406.

Rates.—There is a presumption that telephone rates fixed by a commission are reasonable, and the burden rests upon the company to show that they are confiscatory.

Louisiana *v.* Cumberland Tel., etc., Co., 212 U. S. 414.
Louisville *v.* Cumberland Tel., etc., Co., 225 U. S. 430.
Southwestern Tel. Co. *v.* Pub. Serv. Comm., 262 U. S. 276.

Gas and electric companies.—In this, as in every other legislative rate case, there are presented three questions of prime importance: First, the present reasonable value of the company's plant engaged in the regulated business; second, what will be the probable effect of the reduced rate upon the future net income from the property engaged in serving the public; and, third, in ascertaining the probable net income under the reduced rates pre-

scribed, what deduction, if any, should be made from the gross receipts as a fund to preserve the property from future depreciation.

Lincoln Gas, etc., Co. *v.* Lincoln, 223 U. S. 357; 250 U. S. 256; 256 U. S. 512; 257 U. S. 6.

See also—

Willcox *v.* Consolidated Gas Co., 212 U. S. 19.
Newark Natural Gas, etc., Co. *v.* Newark, 242 U. S. 405.
Cedar Rapids Gas Light Co. *v.* Cedar Rapids, 223 U. S. 655.
Union Dry Goods Co. *v.* Georgia, 248 U. S. 372.
New Orleans Gas Light Co. *v.* Drainage Comm., 197 U. S. 453.
Dobbins *v.* Los Angeles, 195 U. S. 223.
Ohio Oil Co. *v.* Indiana, 177 U. S. 190.
New York, etc., Gas Co. *v.* McCall, 245 U. S. 345.
Los Angeles *v.* Gas Co., 251 U. S. 32.
Walls *v.* Midland Carbon Co., 254 U. S. 300.
Oklahoma Natural Gas Co. *v.* Oklahoma, 258 U. S. 234.
Jacksonville Gas Co. *v.* Jacksonville, 286 Fed. 404.

Water companies.—Under the police power a municipality may regulate the rates and practices of water companies, but such regulation must not operate to deprive a company of its property without due process.

Spring Valley Water Works *v.* Schottler, 110 U. S. 354.
San Diego Land, etc., Co. *v.* Jasper, 189 U. S. 439.
Van Dyke *v.* Geary, 244 U. S. 39.
San Diego Land, etc., Co. *v.* National City, 174 U. S. 739.
Knoxville *v.* Knoxville Water Co., 212 U. S. 1.
Stanislaus County *v.* San Joaquin, etc., Co., 192 U. S. 213.
Denver *v.* New York Trust Co., 229 U. S. 123.
Denver *v.* Denver, etc., Co., 246 U. S. 178.
Ohio Valley Water Co. *v.* Ben Avon Borough, 253 U. S. 287.
Winchester *v.* Water Works Co., 251 U. S. 192.
Dunbar *v.* New York, 251 U. S. 516.
Helena Water Works Co. *v.* Helena, 195 U. S. 388.
Madera Waterworks *v.* Madera, 228 U. S. 454.
Skaneateles Waterworks Co. *v.* Skaneateles, 184 U. S. 363.
Newburyport Water Co. *v.* Newburyport, 193 U. S. 577.
Consumers' Co. *v.* Hatch, 224 U. S. 148.
Trenton *v.* New Jersey, 262 U. S. 182.
Bluefield Co. *v.* Pub. Serv. Comm., 262 U. S. 679.
Joslin Co. *v.* Providence, 262 U. S. 668.

Pipe-line companies.—Order of corporation commission declaring pipe-line company a common carrier held not unconstitutional as denying due process.

Pierce Oil Corp. *v.* Phoenix Ref. Co., 259 U. S. 25.

Insurance companies—*In general.*—A statute which authorizes a public officer to bring an insurance company before a judicial tribunal which, after full opportunity for defense, may determine whether it is insolvent or its condition such as to render its continuance in business hazardous to the insured or to the public, etc., does not deprive the company of property without due process of law.

Chicago Life Ins. Co. *v.* Needles, 113 U. S. 583.
Polk *v.* Mutual Reserve, 207 U. S. 310.
New York Life *v.* Head, 234 U. S. 149.

New York Life *v.* Dodge, 246 U. S. 357.
Hartford Life *v.* Blincoe, 255 U. S. 129.
National Union *v.* Wanberg, 260 U. S. 71.

License to do business.—A statute regulating the licensing of foreign insurance companies does not deny due process of law in giving to the insurance commissioner the discretion, after investigation, of issuing a license merely upon the giving of a surety bond or upon the deposit of bond or mortgage securities acceptable to him.

Phoenix Ins. Co. *v.* McMaster, 237 U. S. 63.

Regulating rates.—The business of insurance is one in which the public has such an interest that a statute authorizing the State insurance superintendent to regulate the rates does not unconstitutionally deprive a company of its liberty of contract.

German Alliance Ins. Co. *v.* Lewis, 233 U. S. 389.

Contract outside of State.—A State statute which, as construed by the State supreme court, prohibits the making of a marine insurance contract outside the State on property then in the State, is invalid as a deprivation of liberty without due process of law.

Allgeyer *v.* Louisiana, 165 U. S. 589.

Regulating liability on insurance policies.—A statute providing that, under every contract or policy of insurance thereafter made or issued by any insurance company connected with any tariff association, the assured may, in addition to the actual loss or damage suffered, recover 25 per cent of the amount of such actual loss, any provision or stipulation in such contract or policy to the contrary notwithstanding, does not deprive a company of its property without due process of law.

German Alliance Ins. Co. *v.* Hale, 219 U. S. 307.

A statute which cuts off any defense by a life insurance company, based upon false or fraudulent statements in the application, unless the matter misrepresented actually contributed to the death of the insured, does not deprive such a company of its liberty without due process of law.

Northwestern Ins. Co. *v.* Riggs, 203 U. S. 243.

Judgment for excessive assessments.—Pecuniary judgment for insured against insurance company for assessments in excess of *maxima* fixed by contract does not involve unconstitutional exercise of visitorial power over corporation.

Hartford Life Ins. Co. *v.* Douds, 261 U. S. 476.

Suicide.—A statute providing that "in all suits upon policies of insurance on life hereafter issued by any company doing business in this State, to a citizen of this State, it shall be no defense that the insured committed suicide," unless contemplated

at the time of the application, is a legitimate exercise of State power.

Whitfield *v.* Aetna Life Ins. Co., 205 U. S. 489.

Grain elevators.—A general State statute regulating the business and charges of public warehousemen engaged in elevating and storing grain for profit does not deprive one of his property without due process of law.

Brass *v.* North Dakota, 153 U. S. 405.
Munn *v.* Illinois, 94 U. S. 135.
Budd *v.* New York, 143 U. S. 546.
Cargill *v.* Minnesota, 180 U. S. 468.
Merchants' Exch. *v.* Missouri, 248 U. S. 365.

Banks and banking.—A statute creating a State banking board and directing it to levy upon every State bank an assessment for the purpose of creating a depositors' guaranty fund is not invalid as depriving a bank of property without due process of law.

Noble State Bank *v.* Haskell, 219 U. S. 104.
Shallenberger *v.* Holstein Bank, 219 U. S. 114.
Lankford *v.* Platte Iron Works, 235 U. S. 461.
Farmers Bank *v.* Federal Reserve Bank, 262 U. S. 649.
Security Savings Bank *v.* California, 263 U. S. 282.

Mines and mining.—A statute requiring entries in certain coal mines to be not less than a prescribed width does not violate this clause but is a proper exercise of the police power.

Barrett *v.* Indiana, 229 U. S. 26.
See also—
St. Louis, etc., Coal Co. *v.* Illinois, 185 U. S. 207.
Plymouth Coal Co. *v.* Pennsylvania, 232 U. S. 531.
Booth *v.* Indiana, 237 U. S. 391.

Relation of employer and employee.[1]—Statutes regulating the hours of labor of employees, the payment of wages, the age of employees in dangerous occupations, etc., are not invalid if they do not result in the taking of private property without due process of law.

Bunting *v.* Oregon, 243 U. S. 426.
Muller *v.* Oregon, 208 U. S. 412.
Riley *v.* Massachusetts, 232 U. S. 671.
Miller *v.* Wilson, 236 U. S. 373.
Bosley *v.* McLaughlin, 236 U. S. 385.
Holden *v.* Hardy, 169 U. S. 380.
Lochner *v.* New York, 198 U. S. 52.
St. Louis, etc., R. Co. *v.* Paul, 173 U. S. 409.
Erie R. Co. *v.* Williams, 233 U. S. 685.
Sturges & Burn *v.* Beauchamp, 231 U. S. 320.
Knoxville Iron Co. *v.* Harbison, 183 U. S. 18.
Keokee, etc., Coke Co. *v.* Taylor, 234 U. S. 224.
Dayton Coal, etc., Co. *v.* Barton, 183 U. S. 23.
Mutual Loan Co. *v.* Martell, 222 U. S. 225.
New York Cent. R. Co. *v.* White, 243 U. S. 188.
Mountain Timber Co. *v.* Washington, 243 U. S. 219.
Hawkins *v.* Bleakly, 243 U. S. 210.

[1] See same subject, pp. 593, 657, and 735.

New York Cent. R. Co. *v.* Bianc, 250 U. S. 596.
Thornton *v.* Duffy, 254 U. S. 361.
Lower Vein Co. *v.* Industrial Board, 255 U. S. 144.
Bowersock *v.* Smith, 243 U. S. 29.
Chicago, etc., R. Co. *v.* McGuire, 219 U. S. 549.
Wilmington Star Min. Co. *v.* Fulton, 205 U. S. 60.
Adams *v.* Tanner, 244 U. S. 590.
Hitchman Coal, etc., Co. *v.* Mitchell, 245 U. S. 229.
Coppage *v.* Kansas, 236 U. S. 1.
McLean *v.* Arkansas, 211 U. S. 539.
Rail, etc., Coal Co. *v.* Yaple, 236 U. S. 338.
Ward & Gow *v.* Krinsky, 259 U. S. 503.
Madera Co. *v.* Industrial Comm., 262 U. S. 499.
Cudahy Packing Co. *v.* Parramore, 263 U. S. 418.
Sheehan Co. *v.* Shuler, 265 U. S. 371.
N. Y. State Rys. *v.* Shuler, 265 U. S. 379.

A strike by employees, intended to prevent through illegal picketing and intimidation of workers the continued manufacture of goods by their employer and having that effect, is not a conspiracy to restrain interstate commerce within the antitrust act, even though the strikers know that the products when made are to be shipped in interstate commerce to fill orders already received: *Provided*, There be no actual or attempted interference with the free transport of the products, when manufactured, from the factory to their destination in other States, or with their sale in those States.

United Mine Workers *v.* Coronado, 259 U. S. 344.
United Leather Workers *v.* Herkert Co., 265 U. S. 457.

As to picketing and secondary boycotts in connection with labor disputes, see—

Truax *v.* Corrigan, 257 U. S. 312.

In Wolff Co. *v.* Industrial Court (262 U. S. 522) the Kansas industrial relations act, requiring employers to pay fixed wages, forbidding strikes, and providing for compulsory arbitration, was held unconstitutional.

Relation of mortgagor and mortgagee.—There has been no deprivation of property without due process of law by the enactment of a statute subsequent to the execution of a mortgage which solely affects the remedy, and does not substantially alter those rights of the mortgagee which existed at the time the mortgage was made.

Red River Valley Bank *v.* Craig, 181 U. S. 548.
Bradley *v.* Lightcap, 195 U. S. 1.
Roller *v.* Holly, 176 U. S. 398.
See First Natl. Bank *v.* Missouri, 263 U. S. 640, as to State law prohibiting establishment of branch banks.

Municipal corporations.—Municipalities of the State are creatures of the State and the power of the State therefore is very broad and may be exercised in many ways affecting the property of, and giving rise to inequalities between, municipali-

ties without encountering the due process clause of the Fourteenth Amendment.

Stewart *v.* Kansas City, 239 U. S. 14.

See also—

Chicago *v.* Sturges, 222 U. S. 313.
Louisiana *v.* New Orleans, 109 U. S. 289.
Heim *v.* McCall, 239 U. S. 175.
Crane *v.* New York, 239 U. S. 195.

A statute authorizing the annexation of two cities, contiguous or in close proximity to each other, does not deprive the citizens and taxpayers of the smaller city of property without due process of law, from the circumstances that the method of voting on the consolidation prescribed in the act has permitted the voters of the larger city to overpower the voters of the smaller city and compel the union without their consent and against their protest.

Hunter *v.* Pittsburgh, 207 U. S. 161.

See also—

Kies *v.* Lowrey, 199 U. S. 233, as to changing boundaries of school district.

Private corporations.—A statute which provides that on a return of "no property" upon an execution against a corporation an execution may be issued against any stockholder without notice to him or other preliminary step, and that the writ is to be enforced against his property to the extent of his unpaid subscription to the stock that he holds in the company, which amount the officer ascertains from the custodian of the records of the corporation, does not furnish due process of law.

Coe *v.* Armour, 237 U. S. 413.

See also—

Selig *v.* Hamilton, 234 U. S. 652.
Bernheimer *v.* Converse, 206 U. S. 516.
Waters-Pierce Oil Co. *v.* Texas, 212 U. S. 112.
Delmar Jockey Club *v.* Missouri, 210 U. S. 324.
New Orleans Waterworks *v.* Louisiana, 185 U. S. 336.
Cosmopolitan Club *v.* Virginia, 208 U. S. 378.

Regulating manufacture and sale of goods.[1]—*Intoxicating liquors.*—In Kidd *v.* Pearson (128 U. S. 16) the court said:

> A State has the right to prohibit or restrict the manufacture of intoxicating liquors within her limits; to prohibit all sale and traffic in them in said State; to inflict penalties for such manufacture and sale, and to provide regulations for the abatement as a common nuisance of the property used for such forbidden purposes; and such legislation by a State is a clear exercise of her undisputed police power which does not * * * deprive any person of property without due process of law.

See also—

Eilenbecker *v.* Plymouth County, 134 U. S. 31.
Mugler *v.* Kansas, 123 U. S. 623.
Clark Distilling Co. *v.* Western Md. R. Co., 242 U. S. 311.
Tracy *v.* Ginzberg, 205 U. S. 170.
Eberle *v.* Michigan, 232 U. S. 700.
Purity Extract, etc., Co. *v.* Lynch, 226 U. S. 192.
Gray *v.* Connecticut, 159 U. S. 74.
Eiger *v.* Garrity, 246 U. S. 97.
Barbour *v.* Georgia, 249 U. S. 454.

[1] See same subject, pp. 142 and 734.

Fertilizers.—In an action to recover damages to a crop alleged to have resulted from fertilizer of inferior quality and containing deleterious ingredients, in which the plaintiff was nonsuited for not having procured a chemical analysis as required by the State law, held, that the requirement was not arbitrary, but reasonable and consistent with this clause.

Jones *v.* Union Guano Co., 264 U. S. 171.

Food laws generally.—A statute prohibiting the sale of food preservatives containing boric acid does not deprive the manufacturer of a property right without due process of law.

Price *v.* Illinois, 238 U. S. 446.

See also—

Arbuckle *v.* Blackburn, 191 U. S. 414.
Schmidinger *v.* Chicago, 226 U. S. 578.
Adams *v.* Milwaukee, 228 U. S. 572.
New York *v.* Van De Carr, 199 U. S. 552.
Hutchinson Ice Cream Co. *v.* Iowa, 242 U. S. 153.
Capital City Dairy Co. *v.* Ohio, 183 U. S. 245.
Powell *v.* Pennsylvania, 127 U. S. 683.
Armour *v.* North Dakota, 240 U. S. 510.
House *v.* Mayes, 219 U. S. 270.
Corn Products, etc., Co. *v.* Eddy, 249 U. S. 427.
Weigle *v.* Curtice Bros. Co., 248 U. S. 285.
Hebe Co. *v.* Shaw, 248 U. S. 297.

The power of a State to protect the public from imposition by sale of short-weight loaves of bread can not be exerted in such a way as arbitrarily to prohibit or interfere with, or impose unreasonable and unnecessary restrictions upon, the business of making and selling.

Burns Baking Co. *v.* Bryan, 264 U. S. 504.

Keeping of markets.—A municipal ordinance prohibiting the keeping of a private market within six squares of any public market of the city does not deprive anyone of property without due process of law.

Natal *v.* Louisiana, 139 U. S. 621.

Prohibiting sale of drugs by itinerant vendor.—A statute forbidding the sale by itinerant vendors of "any drug, nostrum, ointment, or application of any kind, intended for the treatment of disease or injury," although allowing the sale of such articles by other persons, does not violate this amendment.

Baccus *v.* Louisiana, 232 U. S. 334.

Prohibiting sales of merchandise in bulk.—A statute requiring sales of merchandise in bulk and not in the regular course of business to be recorded, and providing that such a sale without the formalities required by the statute shall be void as to creditors, does not deprive the owner of any property right protected by this amendment. Such a statute is within the lawful scope of the police power to prevent fraud in such transactions.

Lemieux *v.* Young, 211 U. S. 489.
Kidd, etc., Co. *v.* Musselman, 217 U. S. 461.

Use of trading stamps.—A tax on the use by retail merchants of redeemable coupons or profit-sharing certificates is not invalid as depriving a person of the liberty of contract.

Rast *v.* Van Deman, 240 U. S. 342.

Use of national flag for advertising.—A statute making it a misdemeanor for anyone to sell any article of merchandise upon which shall have been printed or placed, for purposes of advertisement, a representation of the flag of the United States, is valid.

Halter *v.* Nebraska, 205 U. S. 34.

Game and fish laws.—A statute making it unlawful to have game in possession during the closed season does not deny a person of any property right even as to game brought into the State.

Silz *v.* Hesterberg, 211 U. S. 31.
Lacaste *v.* Dept. of Conservation, 263 U. S. 545.
See also—
Patsone *v.* Pennsylvania, 232 U. S. 138, as to prohibiting possession of shotgun by alien.
Lee *v.* New Jersey, 207 U. S. 67, as to dredging upon an oyster bed without consent of owner.

Antitrust laws.—Statutes which are directed to the prohibition of combinations to restrict trade or in any way limit competition in the production or sale of articles, or to increase or reduce their price in order to preclude a free and unrestrained competition in them, enumerating and forbidding the various ways in which these purposes can be accomplished, do not violate this clause.

National Cotton Oil Co. *v.* Texas, 197 U. S. 115.
See also—
International Harvester Co. *v.* Missouri, 234 U. S. 199.
Waters-Pierce Oil Co. *v.* Texas, 212 U. S. 86.
Peoria Gas, etc., Co. *v.* Peoria, 200 U. S. 48.
Grenada Lbr. Co. *v.* Mississippi, 217 U. S. 433.
Carroll *v.* Greenwich Ins. Co., 199 U. S. 401.
Smiley *v.* Kansas, 196 U. S. 447.
Central Lbr. Co. *v.* South Dakota, 226 U. S. 157.
Mallinckrodt Chemical Works *v.* Missouri, 238 U. S. 41.

Regulating pursuit of occupations.—The reasonable regulation by States and municipalities of various occupations and professions is not contrary to this amendment in so far as it does not operate to deprive one of his property without due process of law.

Dent *v.* West Virginia, 129 U. S. 114.
Watson *v.* Maryland, 218 U. S. 173.
Reetz *v.* Michigan, 188 U. S. 505.
Collins *v.* Texas, 223 U. S. 288.
Brazee *v.* Michigan, 241 U. S. 340.
Lehon *v.* Atlanta, 242 U. S. 53.
Williams *v.* Arkansas, 217 U. S. 79.
Miller *v.* Strahl, 239 U. S. 426.
Reinman *v.* Little Rock, 237 U. S. 171.
Cusack Co. *v.* Chicago, 242 U. S. 526.

Murphy *v.* California, 225 U. S. 623.
Fisher *v.* St. Louis, 194 U. S. 361.
Western Turf Assn. *v.* Greenberg, 204 U. S. 359.
Slaughterhouse Cases, 16 Wall. 36.
Jones *v.* Portland, 245 U. S. 217.
Pierce Oil Corp. *v.* Hope, 248 U. S. 498.
Mutual Film Corp. *v.* Ohio, 236 U. S. 230.
Sperry *v.* Rhodes, 220 U. S. 502.
Fifth Ave. Coach Co. *v.* New York, 221 U. S. 467.
Hadacheck *v.* Sebastian, 239 U. S. 394.
Welch *v.* Swasey, 214 U. S. 91.
Eubank *v.* Richmond, 226 U. S. 137.
Williams *v.* Parker, 188 U. S. 491.
Maguire *v.* Reardon, 255 U. S. 271.
Northwestern Laundry *v.* Des Moines, 239 U. S. 486.
Douglas *v.* Noble, 261 U. S. 165.

Regulation of businesses clothed with public interest.—Businesses said to be clothed with a public interest justifying some public regulation may be divided into three classes: 1. Those which are carried on under authority of a public grant of privileges expressly or impliedly imposing the affirmative duty of rendering public service demanded by any member of the public—e. g., the business of a common carrier or a public utility. 2. Certain occupations, regarded as exceptional, the public interest attaching to which, recognized from earliest times, has survived the period of arbitrary regulation of all trades and callings by Parliament or colonial legislatures—e. g., inns, cabs, and gristmills. 3. Other businesses which have come to have such a peculiar relation to the public that government regulation has been superimposed upon them—where the owner, by devoting his business to the public use, in effect grants the public an interest in that use, and subjects himself to regulation to the extent of such interest.

Wolff *v.* Industrial Court, 262 U. S. 522.

Miscellaneous police regulations—*Race distinctions.*—

Barbier *v.* Connolly, 113 U. S. 27.
Soon Hing *v.* Crowley, 113 U. S. 703.
Buchanan *v.* Warley, 245 U. S. 60.

Delegating pardoning power to a board.—

Dreyer *v.* Illinois, 187 U. S. 71.
Wilson *v.* Eureka City, 173 U. S. 32.

Prohibiting publication encouraging disrespect for law.—

Fox *v.* Washington, 236 U. S. 273.

Enjoining execution of judgment for tort.—

Freeland *v.* Williams, 131 U. S. 405.

Prohibiting waste of mineral waters.—

Lindsley *v.* Natural Carbonic Gas Co., 220 U. S. 61.

Sales on margin for future delivery.—

Booth *v.* Illinois, 184 U. S. 426.
Otis *v.* Parker, 187 U. S. 608.
Brodnax *v.* Missouri, 219 U. S. 285.

'Blue sky" law declared valid.—

Merrick *v.* Halsey, 242 U. S. 568.

Compulsory school attendance.

Society of the Sisters *v.* Pierce, 296 Fed. 928.

Compulsory vaccination.—

Jacobson *v.* Massachusetts, 197 U. S. 11.
Zucht *v.* King, 260 U. S. 174.

Prohibiting Greek-letter fraternities in State schools.—

Waugh *v.* Mississippi University, 237 U. S. 589.

Prohibiting teaching of foreign languages.—

Meyer *v.* Nebraska, 262 U. S. 300.
Bartels *v.* Iowa, 262 U. S. 404.

Erroneously probating nuncupative will.—

Farrell *v.* O'Brien, 199 U. S. 89.

Subjecting premises to judgment for money lost at gambling.—

Marvin *v.* Trout, 199 U. S. 212.

Requiring labor on public roads.—

Butler *v.* Perry, 240 U. S. 328.

Appropriation of bank deposit to pay alimony.—

Pennington *v.* Fourth Nat. Bank, 243 U. S. 269.

Limiting recovery for injury to dog.—

Sentell *v.* New Orleans, etc., R. Co., 166 U. S. 698.

Damages to abutting owner by change of street grade.—

Ettor *v.* Tacoma, 228 U. S. 148.

Ordinance requiring connection with sewers.—

Hutchinson v. Valdosta, 227 U. S. 303.

Prohibiting burials in city limits.—

Laurel Hill Cemetery *v.* San Francisco, 216 U. S. 358.

Junk dealers.—

Rosenthal *v.* New York, 226 U. S. 260.

Eminent Domain[1]

In general.—This amendment forbids a State to take private property for public use without compensation.

Appleby *v.* Buffalo, 221 U. S. 524.
Cincinnati *v.* Louisville, etc., R. Co., 223 U. S. 390.
Head *v.* Amoskeag Mfg. Co., 113 U. S. 9.
Fallbrook Irrigation Dist. *v.* Bradley, 164 U. S. 112.
Wabash R. Co. *v.* Defiance, 167 U. S. 88.
Wheeler *v.* New York, etc., R. Co. 178 U. S. 321.
Charlotte Harbor, etc., R. Co. *v.* Welles, 260 U. S. 8.

For public or private use.—The taking by a State of the private property of one person or corporation without the owner's consent, for the private use of another, is not due process of law.

Missouri Pac. R. Co. *v.* Nebraska 164 U. S. 417.
Chicago, etc., R. Co. *v.* Illinois, 200 U. S. 561.

[1] See same subject, pp. 327 and 607.

Railroad taking land for spur track.—The condemnation by a railroad company of land for a spur track designed to be used for the storage of cars to be laden or unladen by shippers and receivers of freight and to relieve the congestion of business, which through the growth of the town overburdened the limited trackage of the railroad, is not a taking of property for a private use, though the motive which dictated its location over the particular land was to reach a private industry, or because the proprietors of that industry contributed to the cost.

Hairston *v.* Danville, etc., R. Co., 208 U. S. 598.
Union Lime Co. *v.* Chicago, etc., R. Co., 233 U. S. 211.

Necessity for taking.—In condemnation proceedings there is no fundamental right secured by this clause to have the questions of compensation and necessity both passed upon by one and the same jury. In many States the question of necessity is never submitted to the jury which passes upon the question of compensation. It is either settled affirmatively by the legislature or left to the judgment of the corporation invested with the right to take property by condemnation. The question of necessity is not one of judicial character, but rather one for determination by the lawmaking branch of the Government.

Backus *v.* Union Depot Co., 169 U. S. 568.
Sears *v.* Akron, 246 U. S. 242.
Bragg *v.* Weaver, 251 U. S. 57.
Rindge Co. *v.* Los Angeles, 262 U. S. 700.
Milheim *v.* Moffat, 262 U. S. 710.

Provision for compensation.—When the legislature provides for the actual taking and appropriation of private property for public uses, its authority to enact such a regulation rests upon its right of eminent domain, but it is a condition precedent to the exercise of such power that the State makes provision for reasonable compensation to the owner.

Sweet *v.* Rechel, 159 U. S. 399.
Consolidated Turnpike Co. *v.* Norfolk, etc., R. Co., 228 U. S. 326.
Norwood *v.* Baker, 172 U. S. 269.
Pearson *v.* Yewdall, 95 U. S. 296.
Chicago, etc., R. Co. *v.* Chicago, 166 U. S. 247.
Cuyahoga River Power Co. *v.* Akron, 240 U. S. 462.
Hays *v.* Seattle, 251 U. S. 233.

The constitutional requirement of due process of law, which embraces compensation for private property taken for public use, applies in every case of the exertion of governmental power. If in the execution of any power, no matter what it is, the Government, Federal or State, finds it necessary to take private property for public use, it must obey the constitutional injunction to make or secure just compensation to the owner.

Chicago, etc., R. Co. *v.* Illinois, 200 U. S. 593.
Appleby *v.* Buffalo, 221 U. S. 524.
Brand *v.* Union El. R. Co., 238 U. S. 586.

Nominal compensation.—Where the State court, expressly recognizing the right of recovery for any substantial damage in a

particular case, found as a matter of fact that none had been shown by the proof, and consequently only a nominal sum could be recovered, no Federal question is presented.

Provo Bench Canal, etc., Co. *v.* Tanner, 239 U. S. 323.

Mistake of law.—When property is taken by eminent domain it equally is recognized that there must be something more than an ordinary honest mistake of law in the proceedings for compensation before a party can make out that the State has deprived him of his property unconstitutionally.

McGovern *v.* New York, 229 U. S. 370.

Mode of ownership.—An owner in fee, one having an easement of way, light, and air over the land, and one holding a mortgage thereon subject to the easement, can not unite their interests and recover full value of the land taken considered as an unrestricted fee.

Boston Chamber of Commerce *v.* Boston, 217 U. S. 189.

Mode of assessing compensation.—In condemnation proceedings there is due process of law when provision is made for an inquiry as to the amount of compensation in some appropriate way before some properly constituted tribunal. It is within the power of the State to provide that the amount shall be determined in the first instance by commissioners, subject to an appeal to the courts for trial in the ordinary way, or it may provide that the question shall be settled by a sheriff's jury, as it was constituted at common law, without the presence of a trial judge.

Backus *v.* Union Depot Co., 169 U. S. 569.
Long Island Water Supply Co. *v.* Brooklyn, 166 U. S. 694.

Condemnation of shares of stockholders objecting to improvement of railroad.—The improvement of a railroad is for a public use, and condemnation of the stock of dissenting stockholders may be made by a lessee company which has acquired more than three-fourths of the capital stock of such railroad, when such a proceeding is authorized by statute and the purpose of the acquisition of the stock is to enable the purchaser to improve the property.

Offield *v.* New York, etc., R. Co., 203 U. S. 372.

Irrigation of land.—A statute which provides, under the circumstances stated in the act, and with reference to the peculiarities which exist in that State, for the condemnation of the land of one individual for the purpose of allowing another individual to obtain water from a stream in which he has an interest, to irrigate his land, was held to be within the legislative power of the State.

Clark *v.* Nash, 198 U. S. 361.
See also—
Manigault *v.* Springs, 199 U. S. 473;

Head *v.* Amoskeag Mfg. Co., 113 U. S. 9; and
Otis Co. *v.* Ludlow Mfg. Co., 201 U. S. 140, as to overflowing land by erection of milldam.

Water power to generate electricity.—A statute authorizing the condemnation of lands and water sites to manufacture, supply, and sell to the public power produced by water as a motive force provides for condemnation for a public use.

Mt. Vernon-Woodberry, etc., Co. *v.* Alabama, etc., Co., 240 U. S. 30.
Hendersonville Light Co. *v.* Blue Ridge R. Co., 243 U. S. 563.

Mining of coal under private dwellings.—A statute forbidding the mining of coal under private dwellings, or streets, or cities, in places where the right to mine such coal is reserved in the grant is unconstitutional as taking private property without due process of law.

Pennsylvania Coal Co. *v.* Mahon, 260 U. S. 393.

Conveyance of or Title to Land

Contracts for sale of land.—An ordinance forbidding colored persons to occupy houses in blocks where the greater number of houses are occupied by white persons held unconstitutional as preventing the sale of such real estate to a colored person.

Buchanan *v.* Warley, 245 U. S. 60.

Such restriction was held valid when a condition in a deed to real estate, in Los Angeles *v.* Gary (186 Pac. 596).

See also—
Selover *v.* Walsh, 226 U. S. 112, as to 30 days' notice of cancellation of contract where land is purchased on a contract of sale.

Prohibiting ownership of land by nonresident aliens.—Statutes prohibiting the ownership of real estate by nonresident aliens and farm land by resident aliens is not repugnant to this amendment.

Toop *v.* Ulysses Land Co., 237 U. S. 580.
Terrace *v.* Thompson, 263 U. S. 197.
Porterfield *v.* Webb, 263 U. S. 225.
Webb *v.* O'Brien, 263 U. S. 313.
Frick *v.* Webb, 263 U. S. 326.
Truax *v.* Raich, 239 U. S. 33, distinguished.

Enforcing State servitudes or easements.—The amendment does not extend to and override public rights existing in the form of servitudes or easements held by the courts of a State to be valid. The subject matter of such rights and regulations falls within the control of the States, and the provisions of this amendment are satisfied if the State law, with its benefits and its obligations, is impartially administered.

Eldridge *v.* Trezevant, 160 U. S. 468.

Restraining right of alienation.—Statute under which conveyances to a foreign corporation of real property situated within the State are invalid, though executed and delivered in another State, if the grantee had not theretofore filed a copy of its charter with the secretary of State, does not take property without due process of law.

Munday *v.* Wisconsin Trust Co., 252 U. S. 499.

Riparian ownership and rights.—The question of riparian ownership and rights on navigable rivers is to be determined by State law.

St. Anthony Falls Water-Power Co. *v.* St. Paul, 168 U. S. 366.
Hudson County Water Co. *v.* McCarter, 209 U. S. 349.
Yesler *v.* Washington, 146 U. S. 646.

Taking of easements.—When a person has acquired title to property subsequent to judicial decisions of the State assuring him that his easements were secured by contract, such rights are property rights within the meaning of the Constitution, and can not be taken away from him without payment of compensation by statute sustained by a change of ruling by the State courts.

Muhlker *v.* New York, etc., R. Co., 197 U. S. 570.
Western Union Tel. Co. *v.* Louisville, etc., R. Co., 258 U. S. 6.
Crane *v.* Hahlo, 258 U. S. 142.
Jackman *v.* Rosenbaum Co., 260 U. S. 22.

Construction, maintenance, and discontinuance of highways and bridges.—

Essex *v.* Skinkle, 140 U. S. 334.
Jones v. Brim, 165 U. S. 180.
Chicago, etc., R. Co. *v.* Minneapolis, 232 U. S. 430.
Ettor *v.* Tacoma, 228 U. S. 148.
Jackman *v.* Rosenbaum Co., 260 U. S. 22.

Criminal Prosecutions

In general.—"Due process of law" is complied with when a party is regularly indicted by the proper grand jury in the State court, has a trial according to the forms and modes prescribed for such trials, and when in that trial and proceedings he is deprived of no rights to which he is lawfully entitled.

Ker *v.* Illinois, 119 U. S. 436.
Mahon *v.* Justice, 127 U. S. 700.
In re Converse, 137 U. S. 624.
Leeper *v.* Texas, 139 U. S. 462.
In re Manning, 139 U. S. 504.
Murphy *v.* Massachusetts, 177 U. S. 155.
Urquhart *v.* Brown, 205 U. S. 179.
Watson *v.* Maryland, 218 U. S. 173.
Garland *v.* Washington, 232 U. S. 642.
Stewart *v.* Michigan, 232 U. S. 665.
Frank *v.* Mangum, 237 U. S. 309.

Statutory creation or definition of offense.—A municipal ordinance which makes it unlawful to visit or resort to a barred or barricaded house or room where gambling implements are exhibited or exposed to view, does not deprive anyone of his liberty without due process of law, even if it authorizes a conviction for an innocent visitor to such a place.

Ah Sin *v.* Wittman, 198 U. S. 500.

See also—

Sperry, etc., Co. *v.* Rhodes, 220 U. S. 502, as to offense of using photograph for advertising purposes without consent of owner.
Collins *v.* Kentucky, 234 U. S. 634, as to selling pooled tobacco without the consent of the agent of the pool.

Fox *v.* Washington, 236 U. S. 273, as to publication of matter advocating disrespect for law.

Butler *v.* Perry, 240 U. S. 328, as to failure to perform labor on the highways.

Making intent unnecessary as an element of offense.—A statute declaring a casual or involuntary trespass, made by cutting or assisting to cut timber upon the lands of the State, to be a felony, does not deny due process of law.

Shevlin-Carpenter Co. *v.* Minnesota, 218 U. S. 57.

Indefinite standard of conduct.—A statute which with reference to an element of conduct declared to be criminal prescribes no standard of conduct that it is possible to know, violates the fundamental principles of justice embraced in the conception of due process of law.

American Seeding, etc., Co. *v.* Kentucky, 236 U. S. 660.

Collins *v.* Kentucky, 234 U. S. 634.

International Harvester Co. *v.* Kentucky, 234 U. S. 216, holding the Kentucky antitrust act invalid.

Compare—

Nash *v.* U. S., 229 U. S. 373, holding the criminal provisions of the Sherman Antitrust Act to be valid.

Arrest and bail.—Statute for admitting to bail a defendant appealing from conviction for a crime not punishable with death only when there is a stay of proceedings, by filing a certificate of a judge that there is reasonable doubt whether the judgment should stand, does not deprive the defendant of liberty without due process of law.

McKane *v.* Durston, 153 U. S. 684.

See also—

Dallemagne *v.* Moisan, 197 U. S. 169, as to arrest of foreigner under treaty provisions.

Indictments and informations—*Sufficiency of indictment.*—No question of repugnancy to the Constitution can be said fairly to arise when the inquiry of the State courts is directed to the sufficiency of an indictment in the ordinary administration of criminal law, and the statutes authorizing the form of indictment pursued are not obviously violative of the fundamental constitutional principles.

Caldwell *v.* Texas, 137 U. S. 692.

Barrington *v.* Missouri, 205 U. S. 483.

Bergeman *v.* Backer, 157 U. S. 656.

In re Robertson, 156 U. S. 183.

Bolln *v.* Nebraska, 176 U. S. 83.

Davis *v.* Burke, 179 U. S. 399.

Moore *v.* Missouri, 159 U. S. 673.

Kohl *v.* Lehlback, 160 U. S. 293.

Prosecution of felonies by information.—An indictment or presentment by a grand jury, as known to the common law of England, is not essential to due process of law when applied to prosecutions for felonies. The substitution of a presentment or indictment by a grand jury of the proceeding by information without examination and commitment by a magistrate, certify-

ing to the palpable guilt of the defendant, with the right on his part to the aid of counsel and to the cross-examination of witnesses produced for the prosecution, is due process of law.

Hurtado *v.* California, 110 U. S. 520.
Graham *v.* West Virginia, 224 U. S. 616.
Maxwell *v.* Dow, 176 U. S. 602.
Hodgson *v.* Vermont. 168 U. S. 272.
Talton *v.* Mayes, 163 U. S. 382.
McNulty *v.* California, 149 U. S. 648.
Ocampo *v.* U. S., 234 U. S. 91.
Dowdell *v.* U. S., 221 U. S. 325.

Affidavit to support information.—In Patterson *v.* Colorado (205 U. S. 454) it was said:

The requirement in the fourteenth amendment of due process of law does not take up the special provisions of the State constitution and laws into the fourteenth amendment for the purposes of the case, and in that way subject a State decision that they have been complied with to revision by this court.

For this reason, if for no other, the objection that the information was not supported by an affidavit until after it was filed can not be considered.

See also—
French *v.* Taylor, 199 U. S. 274.
Rawlins *v.* Georgia, 201 U. S. 638.
Burt *v.* Smith, 203 U. S. 129.

Preliminary examination.—It is not necessary that an information filed by a prosecuting attorney should have been preceded by the arrest or the preliminary arrest of the accused.

Lem Woon *v.* Oregon, 229 U. S. 586.

Necessity for arraignment and plea.—Where, after arraignment, on an information, plea of not guilty, and conviction a new trial was awarded, putting the defendant on trial upon an amended information without arraignment and plea thereon, did not deny due process of law.

Garland *v.* Washington, 232 U. S. 642, overruling Crain *v.* U. S., 162 U. S. 625.

Trial by jury—*In general.*—A jury trial is not in all cases essential to due process of law. Equity proceeds to final determination of the most important rights without a jury.

Montana Co. *v.* St. Louis, etc., Co., 152 U. S. 171.

In criminal cases due process of law is not denied by a State law which dispenses with a grand jury indictment and permits prosecution upon information, nor by a law which dispenses with the necessity of a jury of twelve, or unanimity in the verdict. Indeed the requirement of due process does not deprive a State of the power to dispense with jury trial altogether.

Jordan *v.* Massachusetts, 225 U. S. 176.

See also—
Walker *v.* Sauvinet, 92 U. S. 90.
Iowa Cent. R. Co. *v.* Iowa, 160 U. S. 392.
Marvin *v.* Trout, 199 U. S. 212.
New York Cent. R. Co. *v.* White, 243 U. S. 188.
Bank of Columbia *v.* Okely, 4 Wheat. 235.

Church *v.* Kelsey, 121 U. S. 282.
Mugler *v.* Kansas, 123 U. S. 623.
Wilson *v.* North Carolina, 169 U. S. 586.
Wagner Elec. Co. *v.* Lyndon, 262 U. S. 226.

The fact that a law confers on the jury commissioners judicial powers in the selection of citizens for jury service does not involve a conflict with this amendment.

Murray *v.* Louisiana, 163 U. S. 101.
See also—
Nobles *v.* Georgia, 168 U. S. 398, as to issue of insanity.
Brown *v.* New Jersey, 175 U. S. 176, as to a struck jury.
Maxwell *v.* Dow, 176 U. S. 581, as to trial by jury of less than 12 persons.
Rawlins *v.* Georgia, 201 U. S. 638, as to exemption of certain persons from jury duty.

Trial under general provisions of law.—Where a party has had the benefit of a full and fair trial in the several courts of his own State, whose jurisdiction was invoked by himself and his rights were measured not by laws made to affect him individually but by general provisions of law applicable to all those in like condition, he can not claim to have been deprived of property without due process of law.

Marchant *v.* Pennsylvania R. Co., 153 U. S. 386.
Porter *v.* Wilson, 239 U. S. 170.
Ughbanks *v.* Armstrong, 208 U. S. 481.

A criminal prosecution in the courts of a State, based upon a law not in itself repugnant to the Federal Constitution, and conducted according to the settled course of judicial proceedings as established by the law of the State, so long as it includes notice and a hearing, or an opportunity to be heard, before a court of competent jurisdiction, according to established modes of procedure, is "due process" in the constitutional sense.

Frank *v.* Mangum, 237 U. S. 309.

Instructions to the jury.—As to instructions, a mere statement in a bill of exceptions that by the instructions the court determined the degree of murder of which the jury should find the defendant guilty, if at all, the defendant was denied the right of trial by jury, is not sufficient of itself to raise a Federal question with sufficient distinctness to give the Supreme Court jurisdiction to consider whether there has been a violation of the fourteenth amendment.

Thomas *v.* Iowa, 209 U. S. 258.

For a felony.—A verdict by a jury is not the essential part in a prosecution for a felony, and a State statute providing that if one indicted for murder shall be convicted on confession in open court, the court shall proceed by examination of witnesses to determine the degree of the crime and give sentence accordingly, does not deprive him of life or liberty without due process of law.

Hallinger *v.* Davis, 146 U. S. 314.

Mob domination.—Trial for murder in a State court in which accused are hurried to conviction under mob domination without regard for their rights is without due process, and void.

Moore *v.* Dempsey, 261 U. S. 86.

Witnesses and evidence.—*In general.*—Exemption from disclosure as a witness of evidence against oneself is not guaranteed by the fourteenth amendment.

Twining *v.* New Jersey, 211 U. S. 78.
Orient Ins. Co. *v.* Daggs, 172 U. S. 557.
Minneapolis, etc., R. Co. *v.* Minnesota, 193 U. S. 52.
Marvin *v.* Trout, 199 U. S. 212.
Mobile, etc., R. Co. *v.* Turnipseed, 219 U. S. 35.
Lindsley *v.* Gas Co., 220 U. S. 61.
Reitler *v.* Harris, 223 U. S. 437.
Esterling Lbr. Co. *v.* Pierce, 235 U. S. 380.

Testimony taken at former hearing.—Due process of law does not forbid a hearing upon a transcript of evidence formerly heard in court when the parties assented to the course.

De La Rama *v.* De La Rama, 241 U. S. 154.

Refusal of court to refer to presumption of innocence.—Refusal to refer to the presumption of innocence in a charge to the jury, when the court charged that the guilt of the accused must be shown beyond a reasonable doubt, and also explained what is meant by the term "reasonable doubt," which charge was sustained by the Supreme Court, is not a denial of due process of law.

Howard *v.* Fleming, 191 U. S. 137.

Judgment.—When by a State law, at the time of the trial and sentence of an accused person, the court in which he was tried and sentenced was a court *de jure*, and the judge who tried and sentenced him was at least judge *de facto*, and the sentence itself was valid, such sentence is not a deprivation of liberty without due process of law.

In re Manning, 139 U. S. 504.

The striking out of an answer and rendering judgment by default for failure to produce books and papers called for is not a deprivation of property without due process of law.

Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.

Sentence and punishment.—Statute providing for the infliction of the death penalty by electricity does not violate the due process clause by imposing a cruel punishment.

In re Kemmler, 136 U. S. 436.
In re Eckart, 166 U. S. 481.
Davis *v.* Burke, 179 U. S. 399.
Dreyer *v.* Illinois, 187 U. S. 71.
Rogers *v.* Peck, 199 U. S. 425.
Coffey *v.* Harlan County, 204 U. S. 659.
Ughbanks *v.* Armstrong, 208 U. S. 481.
Graham *v.* West Virginia, 224 U. S. 616.
Collins *v.* Johnson, 237 U. S. 502.

See also—

Holden *v.* Minnesota, 137 U. S. 483, as to power of governor to fix date of execution.

McElvaine *v.* Brush, 142 U. S. 155, as to mode of directing execution.

Hallinger *v.* Davis, 146 U. S. 314, as to trial under plea of guilty.

McNulty *v.* California, 149 U. S. 645, as to amending law regarding execution.

A statute which provides for a hearing on whether a person convicted of crime and sentenced to the penitentiary has been previously convicted and punished for crime, and if so found to be an habitual criminal to be sentenced to an additional or increased term of imprisonment, does not deprive such a person of liberty without due process of law.

Graham *v.* West Virginia, 224 U. S. 616.

Due process of law does not require that the accused shall, upon the affirmance of a judgment, be sentenced anew by the trial court or be present when the day is fixed by the appellate court for carrying the original sentence into execution. The judgment prescribing the punishment is not vacated by the writ of error; only its execution is stayed pending proceedings in the appellate court.

Schwab *v.* Berggren, 143 U. S. 451.

Legislation and judicial action of the State enforcing it can only be interfered with, if the fines imposed are so grossly excessive as to amount to a deprivation of property without due process of law.

Waters-Pierce Oil Co. *v.* Texas, 212 U. S. 86.

A sentence of 14 years for the crime of perjury can not be held to be so grossly excessive as to be prohibited by this amendment when it does not exceed the limit prescribed by statute.

Collins *v.* Johnston, 237 U. S. 502.

The Federal Constitution neither grants nor forbids to the governor of a State the right to stay the execution of a sentence.

Storti *v.* Massachusetts, 183 U. S. 142.

Enormous fines and imprisonment.—A statute prescribing rates and attempting to enforce them by imposing enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws themselves, is unconstitutional on its face without regard to the question of the insufficiency of those rates.

Ex parte Young, 209 U. S. 123.

That a statute can not, by severe penal provisions, penalize resort to the courts in doubtful cases, see also the following cases.

Missouri *v.* Chicago, etc., R. Co., 241 U. S. 533.

Phoenix R. Co. *v.* Geary, 239 U. S. 277.

Wadley Sou. R. Co. *v.* Georgia, 235 U. S. 651.

Ohio Tax Cases. 232 U. S. 576.

Grand Trunk R. Co. *v.* Michigan, 231 U. S. 457.

Louisville, etc., R. Co. *v.* Garrett, 231 U. S. 298.

Chesapeake, etc., R. Co. *v.* Conley, 230 U. S. 513.
Missouri Pac. R. Co. *v.* Tucker, 230 U. S. 340.
Western Union *v.* Richmond, 224 U. S. 160.
Atchison, etc., R. Co. *v.* O'Connor, 223 U. S. 280.
Gaar, Scott & Co. *v.* Shannon, 223 U. S. 468.
Southwestern Tel., etc., Co. *v.* Danaher, 238 U. S. 482.
Missouri Pac. R. Co. *v.* Humes, 115 U. S. 512.
Minneapolis, etc., R. Co. *v.* Beckwith, 129 U. S. 26.

Penalties and forfeitures.[1]—Penalties imposed by the jury and confirmed by the State courts at the rate of $1,500 and $50 per day for violating State antitrust laws are not so excessive as to deprive defendant of its property without due process of law, where such property amounts to more than $40,000,000 and its dividends have been as high as 700 per cent per annum.

Waters-Pierce Oil Co. *v.* Texas, 212 U. S. 86.
See also—
Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.
Shevlin-Carpenter Co. *v.* Minnesota, 218 U. S. 57.
Standard Oil Co. *v.* Missouri, 224 U. S. 270.
Hutchinson *v.* Valdosta, 227 U. S. 303.
Manhattan Life Ins. Co. *v.* Cohen, 234 U. S. 123.

Absence of defendant—*In general.*—Where a verdict was rendered in the absence of the defendant, who shortly thereafter was made fully aware of the facts, and he then made a motion for a new trial upon many grounds, without including this as one, and had the motion heard by both the trial court and the State supreme court, a ruling of the State courts that he could not, after this motion had been finally adjudicated against him, move to set aside the verdict as a nullity because of his absence when the verdict was rendered, does not violate this amendment.

Frank *v.* Mangum, 237 U. S. 309.

Waiver of right to be present.—When a person charged with a felony has, through his counsel, waived his right to be present, the examination of a juror as to his competency to serve, by the presiding judge in the absence of the prisoner, does not deprive him of his liberty without due process. This was decided upon the ground that under the law of the State, occasional absence of the accused from the trial, from which no injury results to his substantial rights, is not reversible error.

Howard *v.* Kentucky, 200 U. S. 164.

In appellate court.—Due process of law does not require the personal presence of one convicted of a crime in an appellate court at the time of entering the order affirming the judgment by which he was sentenced; and this is so notwithstanding that the appellate court, under express authority conferred by statute, fixes the time when the punishment prescribed by the judgment which is affirmed shall be inflicted.

Schwab *v.* Berggren, 143 U. S. 451.
See also—
Fielden *v.* Illinois, 143 U. S. 456.

[1] As to statutes imposing penalties and forfeitures in connection with taxation, see p. 708.

Appellate jurisdiction and procedure.—The right of appeal is not essential to due process of law.

Reetz *v.* Michigan, 188 U. S. 508.
Lott *v.* Pittman, 243 U. S. 588.

While the fourteenth amendment does not require that a State shall provide for an appellate review in criminal cases, it is perfectly obvious that where such an appeal is provided for, and the prisoner has had the benefit of it, the proceedings in the appellate tribunal are to be regarded as a part of the processs of law under which he is held in custody by the State, and to be considered in determining any question of alleged deprivation of his life or liberty contrary to the fourteenth amendment.

Frank *v.* Mangum, 237 U. S. 327.
Allen *v.* Georgia, 166 U. S. 138.

Statute which requires the court on appeal to consider evidence received without objection, though not admissible under the pleadings, and to render judgment regardless of the variance between the pleadings and the evidence, does not deny due process of law.

Loeber *v.* Schroeder, 149 U. S. 580.
Louisville, etc., R. Co. *v.* Higdon, 234 U. S. 592.

Liability for costs.—The question of what costs are allowed by law is for the court to determine, and an erroneous judgment of what the law allows does not deprive a party of due process of law.

Ballard *v.* Hunter, 204 U. S. 258.

A statute providing that when a prosecution has been instituted without probable cause and maliciously, the name of the prosecutor shall be stated in the finding and he shall be adjudged to pay the costs, and committed to the county jail until they are paid, is not invalid as depriving the prosecutor of his property without due process of law.

Lowe *v.* Kansas, 163 U. S. 81.

Allowance of attorney's fees.—A statute providing for the recovery of reasonable attorney's fees in actions on small claims against all classes of defendants, individual and corporate, does not deprive a defendant in such cases of property without due process of law.

Missouri, etc., R. Co. *v.* Cade, 233 U. S. 642.
Missouri, etc., R. Co. *v.* Harris, 234 U. S. 412.
Capital Trust Co. *v.* Calhoun, 250 U. S. 208.
Chicago, etc., R. Co. *v.* Nye-Schneider-Fowler Co., 260 U. S. 35.

State Control Over Court Procedure

In general.—The State has full control over the procedure in its courts, both in civil and criminal cases, subject only to the qualification that such procedure must not work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution.

Brown *v.* New Jersey, 175 U. S. 175.
Roller *v.* Murray, 234 U. S. 738.
McDonald *v.* Oregon R., etc., Co., 233 U. S. 665.

York *v.* Texas, 137 U. S. 20.
Jordan *v.* Massachusetts, 225 U. S. 167.
Allen *v.* Georgia, 166 U. S. 138.
West *v.* Louisiana, 194 U. S. 263.
Chicago, etc., R. Co. *v.* Cole, 251 U. S. 54.

Proceedings under statute antedating amendment.—Proceedings taken subsequent to the enactment of this amendment under a statute passed prior to its enactment, fall within its inhibition.

Kaukauna Water Power Co. v. Green Bay, etc., Co., 142 U. S. 254.

State court must have jurisdiction.—Proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law.

Pennoyer *v.* Neff, 95 U. S. 733.
Scott *v.* McNeal, 154 U. S. 46.
Dewey *v.* Des Moines, 173 U. S. 193.
Goldey *v.* Morning News, 156 U. S. 518.
Wetmore *v.* Karrick, 205 U. S. 141.
Postal Tel. Cable Co. *v.* Newport, 247 U. S. 464.

Mandamus to maintain or restore status quo.—The granting of an order or writ to maintain or restore the *status quo* pending the outcome of existing litigation does not deny due process of law, especially when the relief is granted upon condition that ample security be given to make good any loss that may be sustained thereby.

Detroit, etc., R. Co. *v.* Michigan, 240 U. S. 564.

Continuance.—Refusing a continuance after permitting a pleading to be amended does not present a case of denial of due process of law, especially when there is nothing to show an abuse of discretion.

Seaboard Air Line *v.* Koennecke, 239 U. S. 352.
Franklin *v.* South Carolina, 218 U. S. 161.

To establish equitable interest in land.—This amendment does not prevent a State from giving jurisdiction to a court of equity of a suit brought by the owner of an equitable interest in land to establish his rights against the holder of the legal title, as depriving the holder of the legal title of the right to a trial by jury which he would have had in a suit at law.

Church *v.* Kelsey, 121 U. S. 283.

Issue of insanity.—When, after a regular conviction and sentence, a suggestion of a then existing insanity is made, it is not necessary, in order to constitute due process of law, that the question so presented should be tried by a jury in a judicial proceeding surrounded by all the safeguards and the requirements of a common-law jury trial, when, by the State law, full and adequate administrative and quasi-judicial process is created for the purpose of investigating the suggestion.

Nobles *v.* Georgia, 168 U. S. 405.
See also—
Simon *v.* Craft, 182 U. S. 427, as to arrest and confinement of insane persons.

Enforcing production of books and papers.—So long as a hearing is given before any proceeding is concluded to enforce the production of books and papers due process of law is afforded.

Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541.

A foreign corporation doing business in the State may be required to produce books and papers, though they may not at any time have been kept within the State.

Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.

See also—

Felts *v.* Murphy, 201 U. S. 123.

Jones *v.* Buffalo Creek Coal, etc., Co., 245 U. S. 328.

Foreign attachment.—Law conditioning defendant's right to appear and contest merits upon giving of special bail or surety's undertaking held consistent with due process.

Ownbey *v.* Morgan, 256 U. S. 94.

Proceedings for contempt.—In matters of contempt a jury is not required by due process of law.

I. C. C. *v.* Brimson, 154 U. S. 489.

Tinsley *v.* Anderson, 171 U. S. 101.

Summary proceedings by a State court to suppress illegal sale of liquors by imposing fine and imprisonment for contempt in violating an injunction issued by it, without presentment or indictment, or trial by jury are process of law.

Eilenbecker *v.* Plymouth County, 134 U. S. 31.

The danger that the testimony given in an examination under State law might incriminate the witness as a violator of the Federal antitrust law, and of the possible use, in a Federal prosecution for a violation of such statute, of the testimony given in the State proceeding, is so unsubstantial and remote as not to make an imprisonment for refusal to testify a deprivation of liberty without due process of law.

Jack *v.* Kansas, 199 U. S. 372.

See also—

Wheeler *v.* U. S., 226 U. S. 478, as to refusal to obey a *subpœna duces tecum.*

The striking of an answer from the files and condemning, as by default, in order to punish for contempt, is a denial of due process of law.

Hovey *v.* Elliot, 167 U. S. 409.

Notice and Opportunity to Be Heard[1]

In general.—The court said in Simon *v.* Craft (182 U. S. 437) that this clause—

does not necessitate that the proceedings in a State court should be by a particular mode, but only that there shall be a regular course of proceedings, in which notice is given of the claim asserted and an opportunity afforded to defend against it. * * * If the essential requisites of full notice and an opportunity to defend were present, this court will accept

[1] See same subject under fifth amendment, p. 595.

the interpretation given by the State courts as to the regularity under the State statute of the practice pursued in the particular case.

See also—

Holmes *v.* Conway, 241 U. S. 624.
Frank *v.* Mangum, 237 U. S. 309.
Standard Oil Co. *v.* Missouri, 224 U. S. 270.
Jacob *v.* Roberts, 223 U. S. 261.
Hooker v. Los Angeles, 188 U. S. 318.
Louisville, etc., R. Co. *v.* Schmidt, 177 U. S. 230.
Roller *v.* Holly, 176 U. S. 407.
Bellingham Bay, etc., R. Co. *v.* New Whatcom, 172 U. S. 318.
Bratton *v.* Chandler, 260 U. S. 110.
Campbell *v.* Olney, 262 U. S. 352.

Extra-official or casual notice or a hearing granted as a matter of favor or discretion can not be deemed a substitute for the due process of law that the Constitution requires.

Cox *v.* Armour, 237 U. S. 413.

In case of lunacy.—Where a party had notice of a motion to appoint a commission of lunacy and was given an opportunity to be heard, the essential elements of due process of law were fully met, although he was then under commitment. If there was any irregularity, it was not open to collateral attack.

Chaloner *v.* Sherman, 242 U. S. 455.

Trial according to applicable mode of procedure.—It is not possible to hold that a party has, without due process of law, been deprived of his property when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice according to the modes of proceeding applicable to such a case.

Davidson *v.* New Orleans, 96 U. S. 105.
Kentucky R. R. Tax Cases, 115 U. S. 321.
Fallbrook Irrigation District *v.* Bradley, 164 U. S. 157.
Goldsmith *v.* Prendergast Constr. Co., 252 U. S. 12.

Notice by statute or ordinance.—When a statute fixes the time and place of meeting of any board or tribunal, no special notice to parties interested is required. The statute is itself sufficient notice.

Reetz *v.* Michigan, 188 U. S. 509.
Home Tel. Co. *v.* Los Angeles, 211 U. S. 265.

Before final judgment.—Due process of law is afforded litigants if they have an opportunity to be heard at any time before final judgment is entered.

Wilson *v.* Standefer, 184 U. S. 415.
Wells *v.* Nevada, 248 U. S. 165.

Restoring lost or destroyed records of title to land.—The California lost-records act of June 16, 1906, and the proceedings thereunder preserve to all parties interested due process of law.

American Land Co. *v.* Zeiss, 219 U. S. 47.

Service of Process

Effect of challenging validity of service.—A statute which, as construed by the supreme court of the State, provides that a defend-

ant who appears only to obtain the judgment of the court upon the sufficiency of the service of the process upon him is thereafter subject to the jurisdiction of the court, although the process against him is adjudged to have been insufficient to bring him into court for any purpose, does not violate this clause.

Kauffman *v.* Wootters, 138 U. S. 287.
York *v.* Texas, 137 U. S. 15.

What constitutes a general appearance.—Whether the filing of a plea in abatement, or taking the question to a higher court, has the effect of a submission to the power of the court, is a question of State law, and a party who has taken that course can not be said to have been deprived of due process of law. A defendant who has not been served with valid process is free to rely upon his defense by letting judgment go by default.

Chicago Life Ins. Co. *v.* Cherry, 244 U. S. 25.

Failure to take cross appeal on validity of service.—Statutory provisions and decisions holding that by permitting a judgment to be reviewed at the instance of the plaintiff in the action without interposing a cross appeal to call into question the decision of the trial court upon a motion to quash the return upon the process the defendant waived his objection to the jurisdiction of the court and could not have any benefit of that objection upon a second appeal, do not deny the defendant due process of law.

Western Life, etc., Co. *v.* Rupp, 235 U. S. 261.

Judgment in personam on contract made in another State.—A judgment giving full faith and credit to a judgment *in personam* rendered in another State without actual service of process on the defendant in an action on a contract not made in that State, denies to the defendant due process of law.

Old Wayne Mutual Life, etc., *v.* McDonough, 204 U. S. 8.

Personal service in State not necessary to judgment in rem.—The rule dispensing with personal service within the State of process on defendant in proceedings in rem against his property within the State applies to a bill for divorce and alimony.

Holmes *v.* Holmes, 283 Fed. 453.

On foreign corporations.—A corporation of one State can not do business in another State without the latter's consent, and that consent may be accompanied with such conditions as the State may think proper to impose. The State may, therefore, impose as a condition upon which a foreign corporation shall be permitted to do business within her limits, that it shall stipulate that in any action arising out of its transactions in the State, it will accept as sufficient the service of process on any agent specially designated. Such conditions must not, however, encroach upon that principle of natural justice which requires notice of a suit to a party before he can be bound by it. It must be reasonable, and the service provided for should be only

upon such agents as may be properly deemed representatives of the foreign corporation.

St. Clair *v.* Cox, 106 U. S. 356.
See also—
Mutual Reserve *v.* Phelps, 190 U. S. 147.
Pennsylvania Fire Ins. Co. *v.* Gold Issue Min. Co., 243 U. S. 93.
St. Mary's Franco-American, etc., Co. *v.* West Virginia, 203 U. S. 183.
Simon *v.* Southern R. Co., 236 U. S. 115.
Goldey *v.* Morning News, 156 U. S. 518.
Riverside, etc., Cotton Mills *v.* Menefee, 237 U. S. 189.
Conley *v.* Mathieson Alkali Works, 190 U. S. 406.
Connecticut Mut., etc., Co. *v.* Spratley, 172 U. S. 602.
Chase Bag Co. *v.* Munson Line, 295 Fed. 990.

Personal service on nonresident.—A judgment without personal service against a nonresident is only good so far as it affects the property which is taken or brought under the control of the court or other tribunal in an ordinary action to enforce a personal liability, and no jurisdiction is thereby acquired over the person of a nonresident further than respects the property so taken.

Dewey *v.* Des Moines, 173 U. S. 203.
See also—
Pennoyer *v.* Neff, 95 U. S. 733.
Owens *v.* Henry, 161 U. S. 642.
Michigan Trust Co. *v.* Ferry, 228 U. S. 346.
Sugg *v.* Thornton, 132 U. S. 525.
Flexner *v.* Farson, 248 U. S. 289.

Constructive service.—Personal notice is not in all cases necessary; there may be, and necessarily must be, some form of constructive service.

Jacob *v.* Roberts, 223 U. S. 261.
Huling *v.* Kaw Valley, etc., Co., 130 U. S. 559.
Leigh *v.* Green, 193 U. S. 79.
Cunnius *v.* Reading, 198 U. S. 458.
Grannis *v.* Ordean, 234 U. S. 385.
McDonald *v.* Mabee, 243 U. S. 90.

Leaving notice at residence.—A statute providing that garnishment notice shall be sufficient notice to the principal defendant if a copy be left at his last and usual place of abode does not deny due process of law.

Herbert *v.* Bicknell, 233 U. S. 70.

Conclusiveness of sheriff's return.—Foreclosure of a mortgage made upon process duly issued but which the sheriff falsely returned as having been duly served, and of which the owner had no notice, does not deprive the owner of property without due process of law.

Miedreich *v.* Lauenstein, 232 U. S. 236.

Settlement of Estates

In general.—A probate proceeding by which jurisdiction of a probate court is asserted over the estate of a decedent for the purpose of administering the same is in the nature of a proceed-

ing *in rem*, and is therefore one as to which all the world is charged with notice, and a statute giving 10 days' notice of the time appointed for the settlement of the final account of a personal representative is not wanting in due process of law as to a nonresident.

Goodrich *v.* Ferris, 214 U. S. 71.

Notice of probate of will.—The failure to give notice of probate of an alleged nuncupative will and the admission of such will to probate does not result in depriving the heirs at law of property without due process of law, when the statute gives to the persons interested full right within a certain time to assail the existence of the will and its probate.

Farrell *v.* O'Brien, 199 U. S. 89.

Escheat.—The exercise of jurisdiction by a probate court to declare an escheat, and to distribute the real property to the county when it is found that the intestate has left no kindred, after appropriate statutory notice, is not a deprivation of property without due process of law.

Christianson *v.* King County, 239 U. S. 356.

For escheat of unclaimed deposits in national banks, see First Natl. Bank *v.* California, 262 U. S. 366.

Administration of estates of absentees or persons presumed to be dead.—

Cunnius *v.* Reading, 198 U. S. 458.

Blinn *v.* Nelson, 222 U. S. 1.

Presumptions

The establishment of presumptions and of rules respecting the burden of proof is clearly within the domain of State governments, and a provision, not unreasonable, *per se*, and not conclusive of a person's rights, does not constitute a denial of due process.

Hawkins *v.* Bleakly, 243 U. S. 210.

See also—

Jones *v.* Brim, 165 U. S. 180.

Blinn *v.* Nelson, 222 U. S. 1.

Scott *v.* McNeal, 154 U. S. 38.

Orient Ins. Co. *v.* Daggs, 172 U. S. 564.

Ownbey *v.* Morgan, 256 U. S. 94.

Hawes *v.* Georgia, 258 U. S. 1.

Priorities

A statute provided that no railroad company should have power to give any mortgage or other kind of lien on its property which would be valid and binding against judgments for damages done to persons and property in the operation of the road. Such a law is valid, as the law in force at the time the mortgage is executed, with all the conditions and limitations it imposes, is the law which determines the force and effect of the mortgage.

East Tennessee, etc., R. Co. *v.* Frazier, 139 U. S. 288.

See also—

Sully *v.* American Nat. Bank, 178 U. S. 299.

Blake *v.* McClung, 172 U. S. 260; 176 U. S. 59.

Provident Inst. *v.* New Jersey, 113 U. S. 506.

Taxation[1]

Property in general.—Whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed on property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide a mode of confirming or contesting the charge imposed, in the ordinary courts of justice, with such personal notice, or such proceeding as to the property as is appropriate to the case, the judgment does not deprive the owner of his property without due process of law.

Davidson *v.* New Orleans, 96 U. S. 97.

By the due process clause it was not intended to impose on the States, when exercising their powers of taxation, any more rigid or stricter curb than that imposed on the Federal Government in a similar exercise of power by the fifth amendment.

French *v.* Barber Asphalt, etc., Co., 181 U. S. 324.
Tonawanda *v.* Lyon, 181 U. S. 389.
Cass Farm Co. *v.* Detroit, 181 U. S. 396.

The general rule is that in classifying property for taxation some benefit to the property taxed is a controlling consideration, and a plain abuse of this power will sometimes justify a judicial interference.

Union Refrigerator, etc., Co. *v.* Kentucky, 199 U. S. 194.

This amendment was not designed to prevent a State from changing its system of taxation in all proper and reasonable ways, nor to compel the States to adopt an iron rule of equality, to prevent classification for purposes of taxation, or the imposition of different rates upon different classes, but it is enough if there be no discrimination between those of the same class and the method of assessment and collection is consistent with natural justice.

Michigan Cent. R. Co. *v.* Powers, 201 U. S. 245.
Southwestern Oil Co. *v.* Texas, 217 U. S. 114.

Inequality of tax.—Railroad property may not be burdened upon basis so different from that used in ascertaining contribution from individual owners as to produce inequality.

Kansas City Sou. R. Co. *v.* Road Imp. Dist., 256 U. S. 658.

For public purposes.—However great the hardship or unequal the burden, it can not be said that a tax collected for public purposes is taking the property of the taxpayer without due process.

Kelly *v.* Pittsburgh, 104 U. S. 82.
Henderson Brdg. Co. *v.* Henderson, 173 U. S. 614.
Green *v.* Frazier, 253 U. S. 233.
Knights *v.* Jackson, 260 U. S. 12.

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[1] See same subject, pp. 74, 180, 315, 362, 366, 511, 600, 636, 659, 728, and 745.

The question whether certain property is taxable under the State law is a State question and does not touch the fundamentals contemplated by this amendment.

Rogers *v.* Hennepin County, 240 U. S. 184.

Retroactive taxation.—A state statute is not brought into conflict with the Constitution by the mere fact that it is retroactive in its operation.

League *v.* Texas, 184 U. S. 161.
Citizens' Nat. Bank *v.* Kentucky, 217 U. S. 443.
Winona, etc., Land Co. *v.* Minnesota, 159 U. S. 537.
For taxation of estates of decedents for a period anterior to date of death, see Bankers Trust Co. *v.* Blodgett, 260 U. S. 647.

Assessment and collection.—The enforced collection of taxes levied for various public purposes held not unconstitutional as depriving a person of his property without due process of law.

Kelly *v.* Pittsburgh, 104 U. S. 78.
See also—
Provident Inst. *v.* Jersey City, 113 U. S. 506.
Kentucky R. R. Tax Cases, 115 U. S. 321.
Jennings *v.* Coal Ridge Coal Co., 147 U. S. 147.
Winona, etc., Land Co. *v.* Minnesota, 159 U. S. 526.
Castillo *v.* McConnico, 168 U. S. 674.
League *v.* Texas, 184 U. S. 156.
Glidden *v.* Harrington, 189 U. S. 255.
Hibben *v.* Smith, 191 U. S. 310.
Fargo *v.* Hart, 193 U. S. 490.
Corry *v.* Baltimore, 196 U. S. 466.
Scottish Union, etc., Ins. Co. *v.* Bowland, 196 U. S. 611.
Michigan Cent. R. Co. *v.* Powers, 201 U. S. 245.
Hatch *v.* Reardon, 204 U. S. 152.
Raymond *v.* Chicago, etc., Co., 207 U. S. 20.
Paddell *v.* New York, 211 U. S. 446.
Illinois Cent. R. Co. *v.* Kentucky, 218 U. S. 551.
Bi-Metallic Inv. Co. *v.* Colorado, 239 U. S. 441.

In Pierce Oil Corp. *v.* Hopkins (264 U. S. 137) it was held that a State law requiring retailers of gasoline to collect the tax from purchasers under penalty of a fine was not invalid under this clause.

Penalties and forfeitures.—The property of a foreign corporation engaged in manufacturing products of cotton seed is not taken without due process of law by the Texas antitrust laws, under which its license to do business in that State is forfeited for violating those laws by entering into an agreement to regulate or fix the price of cotton seed.

National Cotton Oil Co. *v.* Texas, 197 U. S. 115.

Statute imposing on certain companies a penalty of 50 per cent for nonpayment of taxes does not deprive such companies of property without due process of law.

Western Union *v.* Indiana, 165 U. S. 304.

A statute requiring owners to register lands and pay taxes thereon but which only forfeits them for noncompliance there-

with after judicial proceeding and opportunity to be heard, does not deny the property owner due process of law.

Kentucky Union Co. *v.* Kentucky, 219 U. S. 140.
See also—
King *v.* Mullins, 171 U. S. 404.
Chapman *v.* Zobelein, 237 U. S. 135.
Fay *v.* Crozer, 217 U. S. 455.
King *v.* West Virginia, 216 U. S. 92.
Pullman Co. *v.* Knott, 235 U. S. 23.
McMillen *v.* Anderson, 95 U. S. 37.
Wheeler *v.* Jackson, 137 U. S. 245.
Ballard *v.* Hunter, 204 U. S. 241.
Longyear *v.* Toolan, 209 U. S. 414.
Rusch *v.* Duncan Land Co., 211 U. S. 526.

Property within or outside the State—*In general.*—A State can not tax property located or existing permanently beyond its limits.

Atchison, etc., R. Co. *v.* O'Connor, 223 U. S. 280.
Ludwig *v.* Western Union, 216 U. S. 146.
Pullman Co. *v.* Kansas, 216 U. S. 56.
Western Union *v.* Kansas, 216 U. S. 1.
Chicago, etc., R. Co. *v.* Babcock, 204 U. S. 585.
Union Refrigerator, etc., Co. *v.* Kentucky, 199 U. S. 194.
Louisville, etc., Ferry Co. *v.* Kentucky, 188 U. S. 385.
Kansas City, etc., R. Co. *v.* Kansas, 240 U. S. 227.
Kansas City, etc., R. Co. *v.* Stiles, 242 U. S. 111.
Maguire *v.* Trefry, 253 U. S. 12.
Wallace *v.* Hines, 253 U. S. 66.
Tyler *v.* Dane County, 289 Fed. 843.

Tangible property within the State.—A State can, under its taxing power and without denial of due process, tax tangible property having a situs within its borders, irrespective of the residence of the owner, and can impose, if necessary, the obligation to pay such tax upon the custodian or possessor of such property, giving a lien thereon to secure the reimbursement of the tax so paid.

Carstairs *v.* Cochran, 193 U. S. 10.
Kirtland *v.* Hotchkiss, 100 U. S. 498.
Bristol *v.* Washington County, 177 U. S. 141.

On notes for money loaned by a nonresident.—Notes kept in the State of Indiana for money loaned by a nonresident given and made payable in Ohio are not subject to tax as property in Indiana.

Buck *v.* Beach, 206 U. S. 392.
Compare—
Wheeler *v.* Sohmer, 233 U. S. 434, in which is discussed the power of the State to deal with negotiable paper on the footing of situs.

Insurance.—Premium accounts due an insurance company—that is, amounts due by its policy holders in the State for premiums on which credit of 30 and 60 days has been extended—

are subject to taxation notwithstanding no notes have been given for such credits.

Liverpool, etc., Ins. Co. *v.* Board of Assessors, 221 U. S. 346.

See also—

Orient Ins. Co. *v.* Board of Assessors, 221 U. S. 358.

Metropolitan Ins. Co. *v.* New Orleans, 205 U. S. 395.

The taxation of a foreign life insurance company on credits alleged to arise out of policy loans and premium lien note loans, which are not in reality loans, but are credits for which the company is liable on the policy, is contrary to this amendment.

Board of Assessors *v.* New York Life, 216 U. S. 517.

Provident, etc., Soc. *v.* Kentucky, 239 U. S. 103.

Equitable *v.* Pennsylvania, 238 U. S. 143.

Ocean-going vessels.—The taxation of ocean-going vessels as property at the domicile of the owner, when it does not appear that such vessels have acquired an actual situs elsewhere, does not deprive such owner of property without due process.

Southern Pac. Co. *v.* Kentucky, 222 U. S. 63.

Of railroads.—When a railroad runs into or through two or more States, its value, for taxation purposes, in each is fairly estimated by taking that part of the value of the entire road which is measured by the proportion of the length of the particular part in that State to that of the whole road.

Pittsburgh, etc., R. Co. *v.* Backus, 154 U. S. 421.

Cleveland, etc., R. Co. *v.* Backus, 154 U. S. 439.

Union Tank Line *v.* Wright, 249 U. S. 275, as to taxation on a mileage basis, disapproving *obiter dictum* in Pullman Co. *v.* Pennsylvania, 141 U. S. 18.

See also—

American, etc., Transit Co. *v.* Hall, 174 U. S. 70.

Kansas City Sou. R. Co. *v.* Road Imp. Dist., 256 U. S. 658.

Choctaw, etc., R. Co. *v.* Mackey, 256 U. S. 531.

St. Louis, etc., R. Co. *v.* Middlekamp, 256 U. S. 226.

Baker *v.* Druesedow, 263 U. S. 137.

In Wallace *v.* Hines (253 U. S. 66) such method of taxation, when used as an exclusive basis, was held repugnant to this clause.

See also—

Davis *v.* Wallace, 257 U. S. 478.

A State may, if consistent with its constitution, establish a drainage district, set the boundaries, and apportion the cost by fixing the bases of assessment and taxation; and its conclusion that lands will be benefited can not be assailed under this amendment unless palpably arbitrary or discriminatory.

Thomas *v.* Kansas City So. Ry., 261 U. S. 481.

Of street railways.—An assessment for paving between and near tracks is not arbitrary and unreasonable, although greater than assessment for rest of street on abutting lots valued higher than railway property.

Durham Pub. Serv. Co. *v.* Durham, 261 U. S. 149.

Of telegraph companies.—The charter of Wilmington, Del., provides for the assessment for taxation of telegraph lines in the city at not less than $6,600 nor more than $7,300 for each mile of the streets used, the rate of tax being the same as in other cases. Held, not a property but a privilege tax, within the power of the State as applied to a local corporation, and not repugnant to the due process or equal protection clauses of the fourteenth amendment.

New York Tel. Co. *v.* Dolan, 265 U. S. 96.
Western Union *v.* Taggart, 163 U. S. 1.

Of express companies—*Taxation with reference to the whole capital of the company.*—

Sanford *v.* Poe, 165 U. S., 194.
See also—
Adams Exp. Co. *v.* Kentucky, 166 U. S. 171, as to taxation on mileage basis.

Of bridge companies.—A bridge owned by a bridge company and used for railroad purposes is assessable in the State as real estate by the assessor of the county in which it lies, and not by the State board of equalization as a railroad.

Keokuk Bridge Co. *v.* Salm, 258 U. S. 122.

Of corporate franchise.—The franchise granted to a company, chartered by a State, to build and operate a bridge, may be included in the value of the company's property for taxation.

Henderson Brdg. Co. *v.* Kentucky, 166 U. S. 150.
See also—
Illinois Cent. R. Co. *v.* Kentucky, 218 U. S. 551.
Ohio Tax Cases, 232 U. S. 576.
Brooklyn City R. Co. *v.* New York, 199 U. S. 48.
Metropolitan, etc., R. Co. *v.* New York, 199 U. S. 1.
St. Louis, etc., R. Co. *v.* Arknasas, 235 U. S. 350.
New York Cent. R. Co. *v.* Miller, 202 U. S. 584.
Looney *v.* Crane Co., 245 U. S. 178.
International Paper Co. *v.* Massachusetts, 246 U. S. 135.
Locomobile Co. *v.* Massachusetts, 246 U. S. 146.
Citizens' Nat. Bank *v.* Kentucky, 217 U. S. 443.
Schwab *v.* Richardson, 263 U. S. 88.

Of bank deposits.—A tax upon deposits in a national bank to be paid by the depositors held not to be a tax upon the franchise of the bank.

Clement Nat. Bank *v.* Vermont, 231 U. S. 120.
Board of Assessors *v.* New York Life, 216 U. S. 517.
Fidelity, etc., Trust Co. *v.* Louisville, 245 U. S. 54.

Of extraterritorial franchise.—A ferry franchise derived from Indiana to transport persons and property across the Ohio River from the Indiana shore to the Kentucky shore is an incorporeal hereditament derived from having its legal situs in the State of Indiana, and the taxation of that franchise by Kentucky is

a deprivation by that State of the property of the ferry company without due process of law.

Louisville, etc., Ferry Co. *v.* Kentucky, 188 U. S. 398.
Bethlehem Motors Co. *v.* Flynt, 256 U. S. 421.

Of capital stock.—A State may not tax the capital stock of an interstate corporation for the privilege of doing local business if such tax burdens interstate commerce.

Western Union *v.* Kansas, 216 U. S. 1.
Atchison, etc., R. Co. *v.* O'Connor., 223 U. S 280
Delaware, etc., R. Co. *v.* Pennsylvania, 198 U. S. 358.
Cream of Wheat Co. *v.* Grand Forks County, 253 U. S. 325.
Horn Silver Min. Co. *v.* New York, 143 U. S. 305.

Of shares of stock in foreign corporations.—The taxation of shares of stock held by a resident of the State in foreign corporations which do no business and have no property within the State does not deprive the owner of property without due process of law; the property of shareholders in their respective shares is distinct from the corporate property, franchises, and capital stock, and may be separately taxed.

Hawley *v.* Malden, 232 U. S. 1.

Earnings or income.—Where a State reserved the power to alter, amend, or repeal a statute constituting a contract with a corporation exempting it from ordinary taxes, a statute thereafter passed which attempted to preserve all the obligations of the corporation in favor of the State and to take away from the corporation the consideration on the part of the State upon which the duty of the corporation to pay a gross-receipt tax rested, held invalid.

Duluth, etc., R. Co. *v.* St. Louis County, 179 U. S. 302.
United States Exp. Co. *v.* Minnesota, 223 U. S. 335.
Shaffer *v.* Carter, 252 U. S. 37.
Underwood Type. Co. *v.* Chamberlain, 254 U. S. 113.

License tax.—As to exercise of power through private corporation created to aid in enforcement of laws for prevention of cruelty to animals, with power to issue licenses, collect fees, and apply them toward its expenses, see—

Nicchia *v.* New York, 254 U. S. 228.

Of distilled spirits in bonded warehouses.—

Hannis Distilling Co. *v.* Baltimore, 216 U. S. 285.
Thompson *v.* Kentucky, 209 U. S. 340.
Carstairs *v.* Cochran, 193 U. S. 10.

Of wholesale dealers in oil.—An occupation tax on all wholesale dealers in certain specified articles does not on its face deprive wholesale dealers in those articles of their property without due process of law because a similar tax is not imposed on wholesale dealers in other articles.

Southwestern Oil Co. *v.* Texas, 217 U. S. 114.

Succession or inheritance tax.[1]—In Orr *v.* Gilman (183 U. S. 286) the court said:

> It is true that this case [Carpenter *v.* Pennsylvania (17 How. 456)] was decided before the adoption of the fourteenth amendment, but we think it correctly defines the limits of jurisdiction between the State and Federal Governments in respect to the control of the estates of decedents both as they were regarded before and have been regarded since the adoption of the fourteenth amendment. It has never been held that it was the purpose or function of that amendment to change the systems and policies of the States in regard to the devolution of estates, or to the extent of the taxing power over them.

See also—

Chanler *v.* Kelsey, 205 U. S. 466.
Wheeler *v.* New York, 233 U. S. 434.
Keeney *v.* New York, 222 U. S. 525.
National Safe Deposit Co. *v.* Illinois, 232 U. S. 58.
Bullen *v.* Wisconsin, 240 U. S. 625.
Cahen *v.* Brewster, 203 U. S. 543.
Maxwell *v.* Bugbee, 250 U. S. 525.
Watson *v.* State Comptroller, 254 U. S. 122.
Nickel *v.* Cole, 256 U. S. 222.

Of membership in chamber of commerce.—Memberships in an incorporated exchange, as property of the respective members, are distinct from the assets of the corporation, and taxing the members on their memberships and the corporation on its assets does not amount to double taxation.

Rogers *v.* Hennepin County, 240 U. S. 184.

Mortgage interest in land.—Notwithstanding this clause, land subject to mortgage may be taxed for its full value without deduction of the mortgage debt from the valuation either of the land or of the owner's personal property.

Paddell *v.* New York City, 211 U. S. 446.
Savings, etc., Society *v.* Multnomah County, 169 U. S. 421.

Assessments for public improvements.—*In general.*—A State statute authorizing the cost of improvement of streets and other ways to be assessed against the owners of lots, and giving a lien thereon for such assessments, subjecting the power vested in the local government to the supervision of the courts where the particular facts in each case could be examined and the controversies determined by those rules and principles which have always governed courts in dealing with questions of assessment and taxation, does not deprive the owners of such lots of property without due process of law.

Walston *v.* Nevin, 128 U. S. 581.

See also—

Wagner *v.* Baltimore, 239 U. S. 207.
Chadwick *v.* Kelley, 187 U. S. 540.
O'Neill *v.* Leamer, 239 U. S. 244.
Houck *v.* Little River Drainage Dist., 239 U. S. 254.

[1] See same subject, pp. 319, 368, and 729.

According to area.—Whether the area method of assessment is constitutional depends on the results. If it has produced results palpably arbitrary or grossly unequal it is unconstitutional.

But in the absence of such a showing it will be deemed to be constitutional.

Gast Realty, etc., Co. *v.* Schneider Granite Co., 240 U. S. 55.
Withnell *v.* Ruecking Constr. Co., 249 U. S. 63.
Louisville, etc., R. Co. *v.* Barber, etc., Co., 197 U. S. 430.
Cleveland, etc., R. Co. *v.* Porter, 210 U. S. 177.

According to frontage.—The method adopted in the charter and ordinance of a city of charging the cost of paving a street against the adjoining lots according to their frontage is not inconsistent with constitutional principles.

French *v.* Barber, etc., Pav. Co., 181 U. S. 327.
Shumate *v.* Heman, 181 U. S. 402.
Farrell *v.* West Chicago, 181 U. S. 404.

With regard to special benefits.—A municipal ordinance making an assessment per front foot upon property abutting on property condemned and appropriated for a street, for a fixed sum representing the whole cost of the improvement, is invalid, when the cost of the improvement is in substantial excess of the special benefits to the extent of such excess. The court said:

We say "substantial excess" because exact equality of taxation is not always attainable, and for that reason the excess of cost over special benefits, unless it be of a material character, ought not to be regarded by a court of equity when its aid is invoked to restrain the enforcement of a special assessment.

Norwood *v.* Baker, 172 U. S. 279.
See also—
Lyon *v.* Tonawanda, 98 Fed. 364, commenting on the Norwood *v.* Baker case.
Martin *v.* District of Columbia, 205 U. S. 135.
Loeb *v.* Columbia Tp., 91 Fed. 37; reversed on other grounds in 179 U. S. 488.
Butters *v.* Oakland, 263 U. S. 162.

Where a high and dry island is within the bounds of a drainage district an assessment and collection of a tax thereon for the drainage improvement would deprive the owner of property without due process of law.

Myles Salt Co. *v.* Iberia, 239 U. S. 478.
Miller & Lux *v.* Sacramento, 256 U. S. 129.

Extent of taxing district in legislative discretion.—The legislature, in the exercise of its power of taxation, has the right to direct the whole or a part of the expense of a public improvement, such as the laying out, grading, or repairing of a street, to be assessed upon the owners of lands benefited thereby; and the determination of the territorial district which should be

taxed for a local improvement is within the province of legislative discretion.

Spencer *v.* Merchant, 125 U. S. 345.
See also—
Wagner *v.* Baltimore, 239 U. S. 207.
Webster *v.* Fargo, 181 U. S. 394.
Cass Farm Co. *v.* Detroit, 181 U. S. 396.
Detroit *v.* Parker, 181 U. S. 399.
Embree *v.* Kansas City, 240 U. S. 242.
Mt. St. Mary's, etc., Assn. *v.* Mullins, 248 U. S. 501.
Hancock *v.* Muskogee, 250 U. S. 454.
Branson *v.* Bush, 251 U. S. 182.

New assessment in lieu of prior illegal assessment.—Where a special assessment to pay for a particular work has been held to be illegal, no violation of the Constitution arises from a subsequent authority given to make a new special assessment to pay for completed work.

Lombard *v.* West Chicago, 181 U. S. 33.

Imposing personal liability.—Statute authorizing an assessment to be levied upon property for a local improvement, and imposing upon the lot owner, a nonresident, a personal liability to pay such assessment, is one which the State has no power to enact.

Dewey *v.* Des Moines, 173 U. S. 193.

School districts.—The right of a taxpayer in a decree enjoining the maintenance of an illegal school district and issuance of bonds therefor is not private but public in character.

Hodges *v.* Snyder, 261 U. S. 600.

Notice or opportunity for hearing [1]—*In general.*—Where a tax is levied on property according to its value, to be determined by assessors acting judicially, a law prescribing the time when complaints, respecting the justice of the assessments, will be heard, gives all the notice of the assessment required.

Hagar *v.* Reclamation Dist., 111 U. S. 701.
See also—
Hibben *v.* Smith, 191 U. S. 310.
Soliah *v.* Heskin, 222 U. S. 522.
Londoner *v.* Denver, 210 U. S. 373.
King *v.* Portland, 184 U. S. 66.
Williams *v.* Eggleston, 170 U. S. 311.
Farncomb *v.* Denver, 252 U. S. 7.
Kentucky R. R. Tax Cases, 115 U. S. 321.
Bristol *v.* Washington County, 177 U. S. 133.
Gallup *v.* Schmidt, 183 U. S. 300.
Lander *v.* Mercantile Bank, 186 U. S. 458.
Security Trust, etc., Co. *v.* Lexington, 203 U. S. 323.
Central, etc., R. Co. v. Wright, 207 U. S. 127.
Ontario Land Co. *v.* Yordy, 212 U. S. 152.
Clement Nat. Bank *v.* Vermont, 231 U. S. 120.
Turner *v.* Wade, 254 U. S. 64.

[1] See same subject as to application generally, p. 702.

An opportunity to be heard in proceedings for taxation, upon such notice as is usual in such proceedings, is essential to due process of law.

Pittsburgh, etc., R. Co. *v.* Backus, 154 U. S. 421.
Merchants', etc., Bank *v.* Pennsylvania, 167 U. S. 461.
Corry *v.* Baltimore, 196 U. S. 478.
Pullman Co. *v.* Knott, 235 U. S. 23.

In assessments for public improvements.—In making an assessment upon real estate for street improvements, due process of law is afforded where there is opportunity to be heard before the body which is to make the assessment, and the legislature of a State may provide that such hearing shall be conclusive so far as the Federal Constitution is concerned.

Hibben *v.* Smith, 191 U. S. 322.
See also—
Soliah *v.* Heskin, 222 U. S. 522.
Londoner *v.* Denver, 210 U. S. 373.
King *v.* Portland, 184 U. S. 66.
Williams *v.* Eggleston, 170 U. S. 311.
Farncomb *v.* Denver, 252 U. S. 7.

Legislature may, without notice, establish sewer district and direct assessment of cost on all real property within it in proportion to value as assessed for general taxation.

Valley Farms Co. *v.* Westchester County, 261 U. S. 155.

Failure of the State law to provide for notice and hearing before the making of a special assessment by a village council does not deprive the assessed owner of his property without due process, when the law affords him, and he accepts, opportunity to determine all questions of law and fact as to the validity, fairness, and proper amount of the assessment, by proceedings brought by him in the State courts.

Hetrick *v.* Village of Lindsey, 265 U. S. 384.

In condemnation proceedings.—An owner of property which may be assessed for benefits in order to pay an award for property condemned is not entitled to be heard with respect to the amount of the award.

St. Louis, etc., Land Co. *v.* Kansas City, 241 U. S. 419.
Voight *v.* Detroit, 184 U. S. 115.
Goodrich *v.* Detroit, 184 U. S. 432.
Breiholz *v.* Board, 257 U. S. 118.

Judicial proceedings are not essential to due process of law in matters of taxation.

McMillen *v.* Anderson, 95 U. S. 41.
Ballard *v.* Hunter, 204 U. S. 241.
Tonawanda *v.* Lyon, 181 U. S. 389.

At some stage of proceedings.—If the taxpayer be given an opportunity to test the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a quasi-judicial character or before a tribunal provided by the State for the purpose of determining such questions, due process of law is not denied.

Hodge *v.* Muscatine County, 196 U. S. 281.
See also—
Pittsburgh, etc., R. Co. *v.* West Virginia, 172 U. S. 32.
Winona, etc., Land Co. *v.* Minnesota, 159 U. S. 526.
Wurts *v.* Hoagland, 114 U. S. 606.
Hagar *v.* Reclamation Dist., 111 U. S. 701.
Central, etc., R. Co. *v.* Wright, 207 U. S. 127.
Security Trust, etc., Co. *v.* Lexington, 203 U. S. 323.

Mode of confirming or contesting tax.—The power to tax belongs exclusively to the legislative branch of the Government, and when the law provides for a mode of confirming or contesting the charge imposed, with such notice to the person as is appropriate to the nature of the case, the assessment can not be said to deprive the owner of his property without due process of law.

Palmer *v.* McMahon, 133 U. S. 669.
Ballard *v.* Hunter, 204 U. S. 241.
Weyerhauser *v.* Minnesota, 176 U. S. 550.
Bi-Metallic Inv. Co. *v.* Colorado, 239 U. S. 441.

Sufficiency of notice.—The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain. It involves no violation of due process of law when it is executed according to customary forms and established usages or in subordination to the principles which underlie them.

Bell's Gap R. Co. *v.* Pennsylvania, 134 U. S 239.
See also—
Turpin *v.* Lemon, 187 U. S. 51.
Leigh *v.* Green, 193 U. S. 79.
Ontario Land Co. *v.* Yordy, 212 U. S. 152.
Ontario Land Co. *v.* Wilfong, 223 U. S. 543.
Paulsen *v.* Portland, 149 U. S. 30.
Williams *v.* Eggleston, 170 U. S. 304.
Huling *v.* Kaw Valley R. Co., 130 U. S. 559.
Glidden *v.* Harrington, 189 U. S. 255.
Longyear *v.* Toolan, 209 U. S. 414.
Davidson *v.* New Orleans, 96 U. S. 97.
Fallbrook Irrigation Dist. *v.* Bradley, 164 U. S. 112.
Pittsburgh, etc., R. Co. *v.* West Virginia, 172 U. S. 45.
Bellingham Bay, etc., R. Co. *v.* New Whatcom, 172 U. S. 314.
McGregor *v.* Hogan, 263 U. S. 234.

Equal Protection of the Laws [1]

Leading Cases

Barbier *v.* Connolly (113 U. S. 31):

The fourteenth amendment * * * undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcemet of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice, no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.

Gulf, etc., R. Co. *v.* Ellis (165 U. S. 154):

It is well settled that corporations are persons within the provisions of the fourteenth amendment. * * * The rights and securities guaranteed to persons by that instrument can not be disregarded in respect to these artificial entities called corporations any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations. A State has no more power to deny to corporations the equal protection of the law than it has to individual citizens.

Strauder *v.* West Virginia (100 U. S. 310):

The fourteenth amendment makes no attempt to enumerate the rights it is designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property. Any State action that denies this immunity to a colored man is in conflict with the Constitution.

Yick Wo *v.* Hopkins (118 U. S. 373):

Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

See also—

Hayes *v.* Missouri, 120 U. S. 68.
Pembina Min. Co. *v.* Pennsylvania, 125 U. S. 181.
Home Ins. Co. *v.* New York, 134 U. S. 194.
Missouri, etc., R. Co. *v.* May, 194 U. S. 267.
Central Lbr. Co. *v.* South Dakota, 226 U. S. 157.
Patsone *v.* Pennsylvania, 232 U. S. 138.
Maxwell *v.* Dow, 178 U. S. 581.
Soon Hing *v.* Crowley, 113 U. S. 703.
Williams *v.* Mississippi, 170 U. S. 213.

[1] See also "Due process," p. 660, under which a great many of the cases cited also involve equal protection.

Adams *v.* Milwaukee, 228 U. S. 572.
Ex parte Young, 209 U. S. 123.
Plessy *v.* Ferguson, 163 U. S. 537.
Buchanan *v.* Warley, 245 U. S. 60.

Definition and Operation

In general.—What must constitute a denial of the equal protection of the law will depend in a large measure upon what rights have been conferred, or protection extended, under the constitution and laws of the particular State in which the question arises. As the constitution and laws of the States vary, each case must, to an extent, depend upon its own facts. When the State itself undertakes to deal with its citizens by legislation it does so under certain limitations, and it may not single out a class of citizens and subject that class to oppressive discrimination, especially in respect to those rights so important as to be protected by constitutional guaranty.

Nashville, etc., R. Co. *v.* Taylor, 86 Fed. 185.

This constitutional provision does not invalidate legislation on the mere ground of inequality in actual result.

Cotting *v.* Kansas City Stock Yards Co., 183 U. S. 110.

Revised Statutes, section 5519, punishing any two or more persons conspiring to deprive any person of the equal protection of the laws, or of equal privileges or immunities under the laws, was not authorized by fourteenth amendment.

U. S. *v.* Harris, 106 U. S. 629.
Baldwin *v.* Franks, 120 U. S. 678.

The fourteenth amendment secures to all under like circumstances equal protection in the enjoyment of their rights.

Yesler *v.* Washington Harbor Line Com'rs, 146 U. S. 646.

Under Philippine bill of rights.—By the bill of rights enacted by Congress for the Philippine Islands guaranties equivalent to the due process and equality clauses of this amendment were extended to the Islands.

Serra *v.* Mortiga, 204 U. S. 470.

Direct and consequential injuries to property.—There has been no denial of the equal protection of the laws when the supreme court of a State has distinguished, as to the right to recover for injuries to property from the construction of a railway, beween those who were shut off from access to and use of the street by the construction thereon of the railroad and those who suffered not from the construction of the railroad on the street on which their property abutted but from the injuries consequential on the operation of the railroad.

Merchant *v.* Pennsylvania R. Co., 153 U. S. 389.

Classification of subjects of legislation.—The equal-protection clause of the fourteenth amendment does not take from the State the power to classify in the adoption of police laws but admits of

the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

Lindsley *v.* Natural Carbonic Gas Co., 220 U. S. 61.
See also—
Chicago, etc., R. Co. *v.* McGuire, 219 U. S. 549.
Louisville, etc., R. Co. *v.* Melton, 218 U. S. 36.
St. John *v.* New York, 201 U. S. 633.
Field *v.* Barber Asphalt Paving Co., 194 U. S. 618.
Southern R. Co. *v.* Greene, 216 U. S. 400.
Magoun *v.* Illinois Trust, etc., Bank, 170 U. S. 293.
Orient Ins. Co. *v.* Daggs, 172 U. S. 557.
Mutual Loan Co. *v.* Martell, 222 U. S. 225.
Fidelity Mutual *v.* Mettler, 185 U. S. 325.
Williams *v.* Walsh, 222 U. S. 415.
Finley *v.* California, 222 U. S. 28.
Watson *v.* Maryland, 218 U. S. 173.
Bachtel *v.* Wilson, 204 U. S. 36.
Rast *v.* Van Deman ,240 U. S. 342.
Missouri Pac. R. Co. *v.* Mackey, 127 U. S. 209.
Jeffrey Mfg. Co. *v.* Blagg, 235 U. S. 571.
McCloskey *v.* Tobin, 252 U. S. 107.

The right to the equal protection of the laws is not denied when it is apparent that the same law or course of procedure is applicable to any other person in the State under similar circumstances and conditions.

Tinsley *v.* Anderson, 171 U. S. 106.
See also—
Williams *v.* Arkansas, 217 U. S. 79.
Minneapolis, etc., R. Co. *v.* Beckwith, 129 U. S. 29.
Keokee Coke Co. *v.* Taylor, 234 U. S. 224.
Ozan Lumber Co. *v.* Union County Nat. Bank, 207 U. S. 251.
Walston *v.* Nevin, 128 U. S. 582.
Denver *v.* New York Trust Co., 229 U. S. 123.

This clause does not require that the law shall have equality of operation in the sense of an indiscriminate operation on persons merely as such but on persons according to their relation. It does not prevent the States from distinguishing, selecting, and classifying objects of legislation within a wide range of discretion; but a classification must be based upon some reasonable ground, some difference which bears a just and proper relation to the classification, and not a mere arbitrary selection.

Magoun *v.* Illinois, etc., Bank, 170 U. S. 293.
Moore *v.* Missouri, 159 U. S. 673.
Billings *v.* Illinois, 188 U. S. 97.
Field *v.* Barber, etc., Co., 194 U. S. 618.
Williams *v.* Arkansas, 217 U. S. 79.

Statute limiting dower rights of nonresident wife does not violate this clause.

Ferry *v.* Spokane, etc., R. Co., 258 U. S. 314.

Construction by State Courts of Statutes and Ordinances

The Supreme Court of the United States must follow the construction of a State statute given by the State's court and test the constitutionality of that statute under that view.

Gatewood *v.* North Carolina, 203 U. S. 531.

See also—

Board of Education *v.* Illinois, 203 U. S. 553.

Atchison, etc., R. Co. *v.* Matthews, 174 U. S. 100.

Persons

In general.—This amendment is not confined to the protection of citizens. These provisions are universal in their application to all persons within the territorial jurisdiction, without any regard to any difference of race or color or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.

Yick Wo *v.* Hopkins, 118 U. S. 369.

Buchanan *v.* Warley, 245 U. S. 60.

Not limited to protection of colored persons.—While the primary object of this amendment was to secure in the colored race, then recently emancipated, the full enjoyment of their freedom, it is not restricted to that purpose, but relates also to discriminations in matters entirely outside of the political relations of the parties aggrieved.

Holden *v.* Hardy, 169 U. S. 382.

See also—

Maxwell *v.* Dow, 176 U. S. 593.

Strauder *v.* West Virginia, 100 U. S. 303.

Santa Clara County *v.* Southern Pac. R. Co., 18 Fed. 385; affirmed on other grounds, 118 U. S. 394.

Resident aliens.—Residents, alien born, are entitled to the equal protection of the laws.

Truax *v.* Raich, 239 U. S. 33.

Anton *v.* Van Winkle, 297 Fed. 340.

But statute forbidding aliens not eligible to citizenship (Japanese) to acquire interest in land, sustained.

Terrace *v.* Thompson, 263 U. S. 197.

Porterfield *v.* Webb, 263 U. S. 225.

Webb *v.* O'Brien, 263 U. S. 313.

Frick *v.* Webb, 263 U. S. 326.

Employment of citizen labor on public works.—New York statute providing that only citizens of the United States shall be employed on public works and that preference shall be given to citizens of that State held not unconstitutional.

Heim *v.* McCall, 239 U. S. 175.

Crane *v.* New York, 239 U. S. 195.

Corporations—*Definition.*—A corporation is a "person" within the meaning of the equality clause.

Covington, etc., Road Co. *v.* Sandford, 164 U. S. 578.

A New York statute requiring foreign insurance companies to pay taxes equivalent to taxes imposed on foreign insurance com-

panies by the State incorporating them can not be questioned by a Pennsylvania company seeking to do business in New York, as it is not a "person" within the jurisdiction of New York.

Philadelphia Fire Asso. *v.* New York, 119 U. S. 110.

The inhibition of the amendment that no State shall deprive any person within its jurisdiction of the equal protection of the laws is designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation, and a corporation foreign to any given State may not invoke the provision against legislation in such State requiring the payment of a license for the privilege of keeping an office therein, though the word "person" includes a private corporation.

Pembina Mining Co. *v.* Pennsylvania, 125 U. S. 181.

A railroad corporation is a "person" within the meaning of the equality clause.

Smyth *v.* Ames, 169 U. S. 466.

A private corporation not created by the laws of Tennessee nor doing business therein so as to be subject to process from its courts is not "within its jurisdiction" so as to invoke the equality clause.

Blake *v.* McClung, 172 U. S. 239.

A foreign railway corporation which has come into the State in compliance with its laws, and has therein acquired property of a permanent nature, upon which it has paid all State taxes, is a person within the jurisdiction of the State and is protected by the equality clause.

Southern R. Co. *v.* Greene, 216 U. S. 400.

The State possesses no power to withdraw corporations from the guaranties of the Federal Constitution. Whatever property a corporation lawfully acquires is held under the same guaranties which protect the property of natural persons from spoliation.

Railroad Tax Cases, 13 Fed. 722; writ of error dismissed in—San Mateo County *v.* Southern Pac. R. Co., 116 U. S. 138.
Santa Clara County *v.* Southern Pac. R. Co., 18 Fed. 385; judgment affirmed in 118 U. S. 394.
Crescent Oil Co. *v.* Mississippi, 257 U. S. 129.

Trusts, monopolies, combinations, or agreements in restraint of trade.—State antitrust acts held not to conflict with this amendment.

National Cotton Oil Co. *v.* Texas, 197 U. S. 115.
Southern Cotton Oil Co. *v.* Texas, 197 U. S. 134.
Carroll *v.* Greenwich Ins. Co., 199 U. S. 401.
Standard Oil Co. *v.* Tennessee, 217 U. S. 413.
Central Lumber Co. *v.* South Dakota, 226 U. S. 157.
German Alliance Ins. Co. *v.* Kansas, 233 U. S. 389.
International Harvester Co. *v.* Missouri, 234 U. S. 199.
Mallinckrodt, etc., Works *v.* St. Louis, 238 U. S. 41.

Foreign corporations, companies, or firms.—This amendment does not prohibit a State from imposing, for the admission

within its limits of a corporation of another State, such conditions as it chooses.

Pembina, etc., Mining Co. *v.* Pennsylvania, 125 U. S. 181.
Northwestern Nat. Life Ins. Co. *v.* Riggs, 203 U. S. 243.
South Carolina *v.* McMaster, 237 U. S. 63.
Interstate Amusement Co. *v.* Albert, 239 U. S. 560.
Orient Ins. Co. *v.* Daggs, 172 U. S. 566.
Blake *v.* McClung, 172 U. S. 239.
Southern R. Co. *v.* Greene, 216 U. S. 400.
Missouri Pac. R. Co. *v.* Clarendon Co., 257 U. S. 533.
Baltic Min. Co. *v.* Massachusetts, 231 U. S. 68.
Cheney Bros. Co. *v.* Massachusetts, 246 U. S. 147.
Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.
St. Mary's Petroleum Co. *v.* West Virginia, 203 U. S. 183.
Royster Guano Co. *v.* Virginia, 253 U. S. 412.
National Council *v.* State Council, 203 U. S. 151.
Denver *v.* New York Trust Co., 229 U. S. 123.
Charlotte, etc., R. Co. *v.* Gibbes, 142 U. S. 386.
New York *v.* Squire, 145 U. S. 175.
Kentucky Co. *v.* Paramount Exch., 262 U. S. 544.

But a State law which revokes the license of a foreign corporation resorting to a Federal court sitting in the State is unconstitutional.

Terral *v.* Burke Constr. Co., 257 U. S. 529.

Discrimination

In general.—A State may establish one system of law in one portion of its territory and another system in another, without discrimination against either, provided always that it neither encroaches upon the proper jurisdiction of the United States nor denies to any person within its jurisdiction the equal protection of the laws in the same district.

Missouri *v.* Lewis, 101 U. S. 22.
See also—
Hayes *v.* Missouri, 120 U. S. 68.
Budd *v.* New York, 143 U. S. 517.
Williams *v.* Eggleston, 170 U. S. 304.
L'Hote *v.* New Orleans, 177 U. S. 587.
Mason *v.* Missouri, 179 U. S. 328.
Welch *v.* Swasey, 214 U. S. 91.
Toyota *v.* Hawaii, 226 U. S. 184.
Hadacheck *v.* Los Angeles, 239 U. S. 394.
Clark *v.* Kansas City, 176 U. S. 114.

The test laid down in Missouri, etc., R. Co. *v.* May (194 U. S. 269), that "When a State legislature has declared that in its opinion policy requires a certain measure, its action should not be disturbed by the courts under the fourteenth amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched," has been quoted and followed with approval.

Barrett *v.* Indiana, 229 U. S. 26.
Watson *v.* Maryland, 218 U. S. 173.
Williams *v.* Arkansas, 217 U. S. 79.

Classification for purposes of legislation is permissible so long as there is no clear and hostile discrimination against particular persons and classes.

Heisler *v.* Thomas Colliery Co., 260 U. S. 245.

Against individuals.—The equal protection of the laws is secured if the laws operate on all alike and do not subject the individual to an arbitrary exercise of the powers of government.

Duncan *v.* Missouri, 152 U. S. 382.
In re Grice, 79 Fed. 645, reversed in Baker *v.* Grice, 169 U. S. 284.
Atchison, etc., R. Co. *v.* Matthews, 174 U. S. 104.
McPherson *v.* Blacker, 146 U. S. 39.

An objection that a State statute denies to a party the equal protection of the law can only be sustained if the statute treat the party differently from what it does others who are in the same situation as he; that is, in the same relation to the purpose of the statute.

Lloyd *v.* Dollison, 194 U. S. 445.
International Harvester Co. *v.* Missouri, 234 U. S. 199.
Atchison, etc., R. Co. *v.* Matthews, 174 U. S. 103.
Gulf, etc., R. Co. *v.* Ellis, 165 U. S. 150.
Halter *v.* Nebraska, 205 U. S. 34.

In Lindsley *v.* Natural Carbonic Gas Co. (220 U. S. 78) the court said:

The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these: (1) The equal protection clause of the fourteenth amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. (2) A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. (3) When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. (4) One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.

Burdening right to challenge validity of statute.—When the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws.

Cotting *v.* Kansas City Stockyards Co., 183 U. S. 102.

Elections and right to vote.—The power of a State to change its mode of choosing presidential electors was not taken away by the fourteenth and fifteenth amendments, because of the additional rights and guaranties therein secured to citizens in re-

spect to voting at national elections, though at the time of their adoption all the States chose their electors by elections at large.

McPherson *v.* Blacker, 146 U. S. 1.
Pope *v.* Williams, 193 U. S. 621.

Race distinctions—*Exclusion of negroes from juries.*—This amendment secures, among other civil rights, to colored men, when charged with criminal offenses against a State, an impartial jury trial, by jurors indifferently selected or chosen without discrimination against such jurors because of their color. Immunity from any such discrimination is one of the equal rights of all persons, and any withholding it by a State is a denial of the equal protection of the laws, within the meaning of the amendment.

Ex parte Virginia, 100 U. S. 345.
Gibson *v.* Mississippi, 162 U. S. 580.
Strauder *v.* West Virginia, 100 U. S. 303.

A statute simply providing for an exercise of judgment on the part of the jury commissioners in attempting to secure competent jurors of proper qualifications is valid.

Franklin *v.* South Carolina, 218 U. S. 161.

When a State officer, in violation of State law, undertakes to deprive an accused party of a right which the statute law affords him, it ought to be presumed that the court will redress the wrong. If the accused is deprived of the right, the final and practical denial will be in the judicial tribunal which tries the case, after the trial has commenced.

Virginia *v.* Rives, 100 U. S. 321.
Tarrance *v.* Florida, 188 U. S. 520.

Separate schools for white and colored children.—State statutes providing for the education of white and colored children in separate schools are valid.

Hall *v.* De Cuir, 95 U. S. 504; concurring opinion of Justice Clifford.
See also—
Berea College *v.* Kentucky, 211 U. S. 45.
Cumming *v.* Richmond County, 175 U. S. 545.

Separate coaches for white and colored races.[1]—A State statute which provides for separate railway carriages for the white and colored races does not deny the equal protection of the law.

Plessy *v.* Ferguson, 163 U. S. 537.
McCabe *v.* Atchison, etc., R. Co., 235 U. S. 151.

Imposing heavier punishments for interracial offenses.—State statutes, prohibiting the offense of adultery and fornication, do not deny the equal protection of the laws by imposing a heavier penalty when the two sexes are of different races than when the two sexes are of the same race. Whatever discrimination is made in the punishment prescribed is directed against the

[1] See same subject under commerce clause, p. 116.

offense designated, and not against the person of any particular color or race.

Pace *v.* Alabama, 106 U. S. 583.

Personal service on resident, constructive service on nonresident.—A drainage law, providing for the sale of land for levee taxes, which requires personal service of summons upon resident owners of lands for at least 20 days before the rendition of the decree of sale, and providing for constructive service by publication upon nonresident owners of only four weeks, does not deny to the nonresident owners the equal protection of the laws.

Ballard *v.* Hunter, 204 U. S. 241.

Requiring bond in attachment against resident.—A Territorial statute authorizing the issue of an attachment against the property of a nonresident defendant in the case of an alleged fraudulent disposition of property which in case of an attachment against a resident requires the giving of a bond by the plaintiff in attachment as a condition for the issue of the writ, whilst it makes no such requirement in the case of an attachment against a nonresident, does not amount to a denial of the equal protection of the laws.

Central Loan, etc., Co. *v.* Campbell, 173 U. S. 97.

Foreign attachment.—Distinction in State law requiring nonresident individuals to furnish special security before appearing and defending but allowing foreign corporations to defend on security of attachment lien, not a denial to individuals of equal protection.

Ownbey *v.* Morgan, 256 U. S. 94.

Police Power[1]

In general.—The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health, and the public safety, but if, by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void.

Connolly *v.* Union Sewer Pipe Co., 184 U. S. 558.
Davis *v.* Massachusetts, 167 U. S. 43.
New York, etc., R. Co. *v.* Bristol, 151 U. S. 556.
Powell *v.* Pennsylvania, 127 U. S. 678.
Minneapolis, etc., R. Co. *v.* Beckwith, 129 U. S. 26.
Atchison, etc., R. Co. *v.* Vosberg, 238 U. S. 56.

Neither this amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, educa-

[1] See same subject, pp. 146, 309, and 672.

tion, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity.

Barbier *v.* Connolly, 113 U. S. 31.
See also—
Holden *v.* Hardy, 169 U. S. 366.
Dent *v.* West Virginia, 129 U. S. 114.
Mugler *v.* Kansas, 123 U. S. 623.
Munn *v.* Illinois, 94 U. S. 113.
Budd *v.* New York, 143 U. S. 517.
Smyth *v.* Ames, 169 U. S. 466.

In Arkansas *v.* Kansas, etc., Coal Co. (183 U. S. 185) it was said that this amendment did not invest Congress with the power to legislate on subjects which are within the domain of State legislation, as the power to protect life, liberty, and property, and conserve the public health and good order has always belonged to the States.

See also—
Giozza *v.* Tiernan, 148 U. S. 657.
Powell *v.* Pennsylvania, 127 U. S. 678.
Soon Hing *v.* Crowley, 113 U. S. 703.

In Keller *v.* U. S. (213 U. S. 138) act of Congress making it a felony to harbor an alien prostitute was held unconstitutional as an encroachment on the State police power.

Question of reasonableness.—In determining the question of reasonableness of a police regulation, a State legislature is at liberty to act with reference to the established usages, customs, and conditions of the people, and with a view to the promotion of their comfort and the preservation of the public peace and good order.

Plessy *v.* Ferguson, 163 U. S. 550.

Health regulations.—Laws requiring vaccination of children as a condition of their attendance on public schools do not deprive any person of the equal protection of the law.

Jacobson *v.* Massachusetts, 197 U. S. 11.
See also—
Adams *v.* Milwaukee, 228 U. S. 572, as to safeguarding milk.
California Reduction Co. *v.* Sanitary Works, 126 Fed. 29; decree affirmed, 199 U. S. 306, as to disposition of garbage.

Regulation of use of streets and other highways.—A city ordinance regulating the use of a street held not to deny to a railroad company the equal protection of the laws.

Railroad Co. *v.* Richmond, 96 U. S. 521.
Walston *v.* Nevin, 128 U. S. 578.
Jones *v.* Brim, 165 U. S. 180.
Wilson *v.* Eureka City, 173 U. S. 32.
Fifth Ave. Coach Co. *v.* New York, 221 U. S. 467.

Building regulations.—Regulations as to the height of buildings and their mode of construction in cities made by statute for the safety, comfort, or convenience of the people and for the benefit

of property owners generally are valid when not unreasonable or inappropriate.

Welch *v.* Swasey, 214 U. S. 91.
Chicago Dock Co. *v.* Fraley, 228 U. S. 680.

Taxation.[1]—*In general.*—In matters of taxation involving classification of property, exemption, assessment, collection, etc., the State determines its own policy, and the Federal Government is not charged with the duty of supervising State action.

Florida Cent. R. Co. *v.* Reynolds, 183 U. S. 480.

See also—

Citizens Tel. Co. *v.* Fuller, 229 U. S. 322.
New York *v.* Roberts, 171 U. S. 658.
Missouri *v.* Dockery, 191 U. S. 170.
Henderson Brdg. Co. *v.* Henderson, 173 U. S. 620.
Kentucky Union Co. *v.* Kentucky, 219 U. S. 140.
King *v.* Mullins, 171 U. S. 436.
King *v.* West Virginia, 216 U. S. 92.
Walston *v.* Nevin, 128 U. S. 581.
Wurts *v.* Hoagland, 114 U. S. 614.
Cleveland, etc., R. Co. *v.* Porter, 210 U. S. 177.
Field *v.* Barber Asphalt Pav. Co., 194 U. S. 620.
Lombard *v.* West Chicago, 181 U. S. 33.
Kansas City etc., R. Co. *v.* Stiles, 242 U. S. 111.
Ohio Tax Cases, 232 U. S. 576.
Kidd *v.* Alabama, 188 U. S. 731.
Columbus Sou. R. Co. *v.* Wright, 151 U. S. 482.
Branson *v.* Bush, 251 U. S. 182.
Goldsmith *v.* Prendergast, 252 U. S. 12.
Adams Exp. Co. *v.* Ohio, 165 U. S. 228.
Pullman Co. *v.* Knott, 235 U. S. 23.

Equality.—On the question of equality in taxation matters, the court said, in Merchants' Bank *v.* Pennsylvania (167 U. S. 464):

This whole argument of a right under the Federal Constitution to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in Bell's Gap R. Co. *v.* Pennsylvania, 134 U. S. 232, 237, in which case Mr. Justice Bradley, speaking for the court, said: * * * "We think that we are safe in saying that the fourteenth amendment was not intended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of the States, whose object is to secure equality of taxation, * * * but it would render nugatory those discriminations which the best interests of society require."

See also—

Travelers Ins. Co. *v.* Connecticut, 185 U. S. 371.
Giozza *v.* Tiernan, 148 U. S. 662.
St. Louis, etc., R. Co. *v.* Arkansas, 235 U. S. 350.
Davidson *v.* New Orleans, 96 U. S. 97.
Jennings *v.* Coal Ridge, etc., Co., 147 U. S. 147.
Brown-Forman Co. *v.* Kentucky, 217 U. S. 563.
Southwestern Oil Co. *v.* Texas, 217 U. S. 114.
Metropolis Theater Co. *v.* Chicago, 228 U. S. 61.
Toyota *v.* Hawaii, 226 U. S. 184.
Michigan Cent. R. Co. *v.* Powers, 201 U. S. 245.

[1] See same subject, pp. 74, 180, 315, 362, 366, 511, 600, 636, 659, 707, and 745.

Southern R. Co. *v.* Greene, 216 U. S. 400.
Baltic Min. Co. *v.* Massachusetts, 231 U. S. 68.
American Sugar Ref. Co. *v.* Louisiana, 179 U. S. 95.
Cargill Co. *v.* Minnesota, 180 U. S. 468.
Sunday Lake Iron Co. *v.* Wakefield, 247 U. S. 350.
Ft. Smith Lbr. Co. *v.* Arkansas, 251 U. S. 532.
Shaffer *v.* Carter, 252 U. S. 37.
Pacific Exp. Co. *v.* Seibert, 142 U. S. 339.
Beers *v.* Glynn, 211 U. S. 477.
Darnell *v.* Indiana, 226 U. S. 390.
New York *v.* Barker, 179 U. S. 284.
Pittsburgh, etc., R. Co. *v.* Backus, 154 U. S. 427.
Kentucky R. R. Tax Cases, 115 U .S. 336.
Raymond *v.* Chicago, etc., Co., 207 U. S. 20.
Redemption Bank *v.* Boston, 125 U. S. 60.
Palmer *v.* McMahon, 133 U. S. 669.
Atlantic Coast Line *v.* Daughton, 262 U. S. 413.
Puget Sound Co. *v.* King County, 264 U. S. 22.

In Sioux City Bridge Co. *v.* Dakota Co. (260 U. S. 441) it was held that arbitrary assessment of property at true value, while other like property is assessed lower, denies equal protection.

Corporation taxes.—Statute distributing for purposes of taxation the rolling stock and personal property of railroad companies among the several counties traversed by the road, and subjecting it to the varying rates of taxation prevailing therein, instead of taxing it in the county of its principal office, as is done in the case of individuals and other corporations, is not a discrimination in violation of this amendment.

Columbus, etc., R. Co. *v.* Wright, 151 U. S. 470.
See also—
Weir *v.* Norman, 166 U. S. 171.
American Refrigerator Transit Co. *v.* Hall, 174 U. S. 70.
Duluth, etc., R. Co. *v.* St. Louis County, 179 U. S. 302.
Kidd *v.* Alabama, 188 U. S. 730.
Board of Assessors *v.* Comptoir National, 191 U. S. 388.
American Steel & Wire Co. *v.* Speed, 192 U. S. 500.
Home Ins. Co. *v.* New York, 134 U. S. 594.
St. Louis, etc., R. Co. *v.* Arkansas, 235 U. S. 350.
Ohio Tax Cases, 232 U. S. 576.
Pacific Exp. Co. *v.* Seibert, 142 U. S. 339.
Flint *v.* Stone Tracy Co., 220 U. S. 107.
Stanton *v.* Baltic Mining Co., 240 U. S. 103.
Baker *v.* Druesedow, 263 U. S. 137.

Succession or inheritance taxes.[1]—Statute imposing a transfer tax is not a deprivation of the equal protection of the laws when there are involved no arbitrary or unequal regulations.

Orr *v.* Gilman, 183 U. S. 287.
See also—
Billings *v.* Illinois, 188 U. S. 101.
Campbell *v.* California, 200 U. S. 87.
Magoun *v.* Bank, 170 U. S. 296.
Beers *v.* Glynn, 211 U. S. 477.
Moffitt v. Kelly, 218 U. S. 400.

[1] See also same subject, pp. 319, 368, and 713.

Blackstone *v.* Miller, 188 U. S. 189.
Board of Education, etc., *v.* Illinois, 203 U. S. 553.
Hatch *v.* Reardon, 204 U. S. 152.

License taxes.—A specific tax levied under a State statute upon person engaged in the conduct of a particular business is not obnoxious to this amendment.

Cook *v.* Marshall County, 196 U. S. 261.
See also—
Toyota *v.* Hawaii, 226 U. S. 184.
Singer Sewing Mach. Co. *v.* Brickell, 233 U. S. 304.
Southwestern Oil Co. *v.* Texas, 217 U. S. 114.
Kehrer *v.* Stewart, 197 U. S. 69.
Armour *v.* Lacy, 200 U. S. 226.
Rast *v.* Van Deman, 240 U. S. 342.
Williams *v.* Fears, 179 U. S. 274.
Gundling *v.* Chicago, 177 U. S. 186.
Payne *v.* Kansas, 248 U. S. 112.
Armour *v.* Virginia, 246 U. S. 1.

A State is not forbidden by the fourteenth amendment to delegate either to a municipal council, or to a board appointed for that purpose, the power to divide businesses or occupations carried on in the city into classes or subclasses, and prescribe the tax to be paid by the members of each class.

Bradley *v.* Richmond, 227 U. S. 477.
New York *v.* Roberts, 171 U. S. 658.
Flint *v.* Stone Tracy Co., 220 U. S. 107.
Baltic Min. Co. *v.* Massachusetts, 231 U. S. 68.

Fish and game.—Classification of wild animals for taxation. Distinction between wild animals taken with permission of State and other property in hands of merchants.

Lacoste *v.* Dept. of Conservation, 263 U. S. 545.

Miscellaneous taxation cases.—

St. Louis, etc., R. Co. *v.* Arkansas, 235 U. S. 350.
Coulter *v.* Louisville, etc., R. Co., 196 U. S. 608.
Farmers, etc., Sav. Bank *v.* Minnesota, 232 U. S. 516.
Thompson *v.* Kentucky, 209 U. S. 340.
Rogers *v.* Hennepin County, 240 U. S. 184.
Quong Wing *v.* Kirkendall, 223 U. S. 59.
Trimble *v.* Seattle, 231 U. S. 683.
Paddell *v.* New York, 211 U. S. 446.
Downman *v.* Texas, 231 U. S. 353.
Hammond Packing Co. *v.* Montana, 233 U. S. 331.
Rusch v. Duncan, etc., Co., 211 U. S. 526.
First Nat. Bank *v.* Chapman, 173 U. S. 205.
New York *v.* Barker, 179 U. S. 279.
Commercial Bank *v.* Chambers, 182 U. S. 556.
League *v.* Texas, 184 U. S. 156.
Gallup *v.* Schmidt, 183 U. S. 300.
Florida, etc., R. Co. *v.* Reynolds, 183 U. S. 471.
Fargo *v.* Hart, 193 U. S. 490.
Oliver Iron Co. *v.* Lord, 262 U. S. 172.

Railroad companies[1]—*In general.*—A general statute of a State regulating the use of railroads in the State, when not forbidden

[1] See also commerce clause, p. 83.

by charter contracts, does not take away from a corporation owning or operating a railroad within the State the equal protection of the laws when the statute applies equally to all persons or corporations owning or operating railroads in the State, without giving a preference to one over another.

Railroad Commission Cases, 116 U. S. 307.
See also—
Minneapolis, etc., R. Co. *v.* Beckwith, 129 U. S. 26.
New York, etc., R. Co. *v.* Bristol, 151 U. S. 556.
Williams *v.* Arkansas, 217 U. S. 79.
Chicago, etc., R. Co. *v.* Tranbarger, 238 U. S. 67.
Detroit, etc., R. Co. *v.* Osborn, 189 U. S. 383.
Atlantic Coast Line *v.* Georgia, 234 U. S. 280.
Railroad Co. *v.* Richmond, 96 U. S. 521.
Atlantic Coast Line *v.* North Carolina, 206 U. S. 1.
Chicago, etc., R. Co. *v.* Arkansas, 219 U. S. 453.
St. Louis, etc., R. Co. *v.* Arkansas, 240 U. S. 518.
Seaboard Air Line *v.* Seegers, 207 U. S. 73.
Chicago, etc., R. Co. *v.* Iowa, 233 U. S. 334.
New York, etc., R. Co. *v.* New York, 165 U. S. 628.
Savannah, etc., R. Co. *v.* Savannah, 198 U. S. 397.
Metropolitan St. R. Co. *v.* New York, 199 U. S. 1.
Chicago, etc., R. Co. *v.* Chicago, 166 U. S. 257.
Missouri Pac. R. Co. *v.* Humes, 115 U. S. 518.
St. Louis, etc., R. Co. *v.* Matthews, 165 U. S. 5.
Mobile, etc., R. Co. *v.* Turnipseed, 219 U. S. 35.
Kansas City Sou. R. Co. *v.* Anderson, 233 U. S. 325.
Yazoo, etc., R. Co. *v.* Jackson Vinegar Co., 226 U. S. 217.
Chesapeake, etc., R. Co. *v.* West Virginia, 242 U. S. 603.
Great Nor. R. Co. *v.* Minnesota, 246 U. S. 434.
Erb *v.* Morasch, 177 U. S. 585.
Missouri, etc., R. Co. *v.* May, 194 U. S. 269.
Chicago, etc., R. Co. *v.* Anderson, 242 U. S. 283.
Lake Shore, etc., R. Co. *v.* Clough, 242 U. S. 375.
Pacific Gas, etc., Co. *v.* Police Ct., 251 U. S. 22.
Milwaukee El. R. Co. *v.* Wisconsin, 252 U. S. 100.
Chicago, etc., R. Co. *v.* Nye-Schneider-Fowler Co., 260 U. S. 35.

Regulation of rates.—(*a*) *Must admit of just compensation.*—A State enactment, or regulations made under the authority of a State enactment, establishing rates for the transportation of persons or property by railroad, that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment.

Smyth *v.* Ames, 169 U. S. 526.
St. Louis, etc., R. Co. *v.* Gill, 156 U. S. 657.
Reagan *v.* Farmers' Loan, etc., Co., 154 U. S. 390.
Pennsylvania R. Co. *v.* Towers, 245 U. S. 6.
Arkadelphia Milling Co. *v.* St. Louis, etc., R. Co., 249 U. S. 134.

(*b*) *Prohibiting greater rate for short haul.*—A State by enacting a rule of action for railroad companies forbidding a greater rate of charges for a shorter than for a longer distance, does not deny to a railroad the equal protection of the laws.

Louisville, etc., R. Co. *v.* Kentucky, 183 U. S. 512.
Missouri Pac. R. Co. *v.* McGrew Coal Co., 244 U. S. 191.

(*c*) *Mileage tickets.*—A statute requiring railroads to keep for sale 1,000-mile tickets at certain rates, which rates are lower than the general rates, is a denial of the equal protection of the laws.

Lake Shore, etc., R. Co. *v.* Smith, 173 U. S. 684.

(*d*) *Lower rates for public-school pupils.*—A statute requiring the transportation of pupils to and from the public schools at one-half the regular fare charged by it does not deny to a railway the equal protection of the law when the statute was in force at the time it took its charter.

Interstate R. Co. *v.* Massachusetts, 207 U. S. 79.

(*e*) *According to length of road.*—A statute which classifies railroads according to their length and fixes a maximum rate of charges for the carriage of passengers in each class is not unconstitutional.

Dow *v.* Beidelman, 125 U. S. 680.
Chesapeake, etc., R. Co. *v.* Conley, 230 U. S. 513.

Requiring train connections.—An order of a State railroad commission requiring a carrier to make a certain connection with another road, so as to promote the convenience of the traveling public, is not so inherently unjust and unreasonable as to amount to a deprivation of property without due process of law.

Atlantic Coast Line *v.* North Carolina, 206 U. S. 1.

Requiring facilities for interchange of freight.—An order made by a railroad commission, under the authority of a statute requiring railroads to furnish customary facilities for the interchange of freight and empowering the commission to prevent unjust discrimination, requiring a railroad company to discontinue the practice of demanding from one connecting carrier the prepayment of freight while making no such demand from another, does not deny the equal protection of the laws.

Wadley Southern R. Co. *v.* Georgia, 235 U. S. 651.

Other public-service companies.—The rules and principles that apply to railroad companies are also applicable to telegraph, telephone, water, turnpike, stockyard, and gas companies.

Home Telephone, etc., Co. *v.* Los Angeles, 211 U. S. 265.
Western Union *v.* Commercial Milling Co., 218 U. S. 406.
Stanislaus County *v.* San Joaquin, etc., Co., 192 U. S. 213.
Denver *v.* New York Trust Co., 229 U. S. 123.
Covington, etc., Road Co. *v.* Sandford, 164 U. S. 597.
Cotting *v.* Kansas City Stock Yards Co., 183 U. S. 102.
Springfield Gas Co. *v.* Springfield, 257 U. S. 66.
Packard *v.* Banton, 264 U. S. 140.

Insurance companies.—The liberty of contract guaranteed by this amendment is not more intimately involved in price regulation than in other proper forms of regulation of business and

property affected by a public use, and so held as to regulation of rates of fire insurance.

German Alliance Ins. Co. *v.* Lewis, 233 U. S. 389.
Phoenix Ins. Co. *v.* McMaster, 237 U. S. 63.
Hancock Mutual Life *v.* Warren, 181 U. S. 73.
Northwestern Nat. Life *v.* Riggs, 203 U. S. 243.
Orient Ins. Co. *v.* Daggs, 172 U. S. 557.

Statute imposing a so-called tax on premiums paid for insurance on property in the State to companies not authorized to do business in the State is invalid as applied to policies contracted for, delivered, and paid for outside the State.

St. Louis Cotton Co. *v.* Arkansas, 260 U. S. 346.

Irrigation and drainage districts.—Act providing for drainage and different methods of enforcing the law against resident and nonresident owners, held not unconstitutional.

District of Columbia *v.* Brooke, 214 U. S. 138.
Farmers Irrigation Dist. *v.* O'Shea, 244 U. S. 325.

Grain elevators.—Statute regulating the charges of grain elevators held to be a legitimate exercise of the police power of the State.

Budd *v.* New York, 143 U. S. 517.
Munn *v.* Illinois, 94 U. S. 113.
Brass *v.* Stoeser, 153 U. S. 391.

Banks and trust companies.—The provisions of the private banking act of New York of 1910 are not contrary to the spirit of this amendment either on account of the regulations of the business or by reason of the exception of other classes of banks therefrom.

Engel *v.* O'Malley, 219 U. S. 128.
Assaria State Bank *v.* Dolley, 219 U. S. 121.
Provident Inst. *v.* Malone, 221 U. S. 660.
Griffith *v.* Connecticut, 218 U. S. 563.
Dillingham *v.* McLaughlin, 264 U. S. 370.

Mines and mining.—A law providing for the inspection of coal mines is not unconstitutional by reason of its limitation to mines where more than five men are employed at any one time.

St. Louis, etc., Coal Co. *v.* Illinois, 185 U. S. 203.
McLean *v.* Arkansas, 211 U. S. 539.
Wilmington Star Min. Co. *v.* Fulton, 205 U. S. 60.
Williams *v.* Walsh, 222 U. S. 415.

Statute taxing anthracite, and not bituminous, coal makes a valid classification under this section.

Heisler *v.* Thomas Colliery Co., 260 U. S. 245.

As to the use of the State police power to prevent a waste or disproportionate use of gas by a particular landowner in order to protect the equal rights of other owners, see Walls *v.* Midland Carbon Co., 254 U. S. 300.

Manufacture and sale of goods.—Under the police power the States have made regulations relating to merchandise, and such regulations have been upheld by the courts where inequality of protection has been shown not to exist.

National Cotton Oil Co. *v.* Texas, 197 U. S. 115.
Central Lbr. Co. *v.* South Dakota, 226 U. S. 157.
Connolly *v.* Union Sewer Pipe Co., 184 U. S. 540.
Mallinckrodt Chemical Works *v.* St. Louis, 238 U. S. 41.
McFarland *v.* American Sugar Ref. Co., 241 U. S. 79.
Standard Oil Co. *v.* Tennessee, 217 U. S. 413.
International Harvester Co. *v.* Missouri, 234 U. S. 199.
Lemieux *v.* Young, 211 U. S. 489.
Kidd, etc., Co. *v.* Musselman 217 U. S. 461.
Broadnax *v.* Missouri, 219 U. S. 285.
Ozan Lbr. Co. *v.* Union County Bank, 207 U. S. 251.
Natal *v.* Louisiana, 139 U. S. 621.
Armour *v.* North Dakota, 240 U. S. 510.
Rosenthal *v.* New York, 226 U. S. 260.
Halter *v.* Nebraska, 205 U. S. 34.
Baccus *v.* Louisiana, 232 U. S. 334.
Rippey *v.* Texas, 193 U. S. 509.
Cox *v.* Texas, 202 U. S. 446.
Eberle *v.* Michigan, 232 U. S. 700.
Price *v.* Illinois, 238 U. S. 446.
Adams *v.* Milwaukee, 228 U. S. 572.
Lieberman *v.* Van De Carr, 199 U. S. 552.
St. John *v.* New York, 201 U. S. 633.
Hutchinson Ice Cream Co. *v.* Iowa, 242 U. S. 153.
Powell *v.* Pennsylvania, 127 U. S. 683.
Capital City Dairy Co. *v.* Ohio, 183 U. S. 238.
Gundling *v.* Chicago, 177 U. S. 183.
Heath & Milligan Co. *v.* Worst, 207 U. S. 338.
Corn Products Ref. Co. *v.* Eddy, 249 U. S. 427.
Raley & Bros. v. Richardson, 264 U. S. 157.
Jones *v.* Union Guano Co., 264 U. S. 171.

Options to buy or sell grain at a future time.—In holding that the grain futures act of Illinois was not unconstitutional, it was said in Booth *v.* Illinois (184 U. S. 425):

> If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that certain admitted evils can not be successfully reached unless that calling be actually prohibited, the courts can not interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law (p. 429).

See also—

Mugler *v.* Kansas, 123 U. S. 623.
Minnesota *v.* Barber, 136 U. S. 313.
Brimmer *v.* Rebman, 138 U. S. 78.
Voight *v.* Wright, 141 U. S. 62.
Otis *v.* Parker, 187 U. S. 606, as to sales of stock on margin.
Citizens Nat. Bank *v.* Durr, 257 U. S. 99, as to membership in stock exchange.

Intoxicating liquors.[1]—In holding that the Michigan local option act of 1889 was not unconstitutional under this pro-

[1] See same subject, pp. 605, 685, and 747.

vision of the fourteenth amendment on account of discrimination in making certain specific exceptions to the general prohibition, the court said in Eberle *v.* Michigan (232 U. S. 701):

> Nor can the judgment be reversed because the original act, while prohibiting liquor to be sold by merchants permitted it to be sold by druggists for medicinal, mechanical, or scientific purposes. The contention that this was an unlawful discrimination is answered by Kidd *v.* Pearson, 128 U. S. 1; Rippey *v.* Texas, 193 U. S. 504; Lloyd *v.* Dollison, 194 U. S. 445. Those cases show that the State may prohibit the sale of liquor absolutely or conditionally; may prohibit the sale as a beverage and permit the sale for medicinal and like purposes; that it may prohibit the sale by merchants and permit the sale by licensed druggists.

See also—

Foster *v.* Kansas, 112 U. S. 201.
Western Turf Ass'n *v.* Greenberg, 204 U. S. 359.
Pabst Brewing Co. *v.* Crenshaw, 198 U. S. 17.

Relation of employer and employee.[1]—Workmen's compensation acts, employers' liability acts, fellow-servant laws, laws regulating hours of labor, payment of wages, etc., are not violative of this provision if made in the legitimate exercise of the police power.

Northern Pac. R. Co. *v.* Meese, 239 U. S. 614.
Memphis Cotton Oil Co. *v.* Tolbert, 171 S. W. 309.
Tullis *v.* Lake Erie, etc., R. Co., 175 U. S. 348.
Miller *v.* Wilson, 236 U. S. 373.
St. Louis, etc., R. Co. *v.* Paul, 173 U. S. 408.

See also—

Bosley *v.* McLaughlin, 236 U. S. 385.
Holden *v.* Hardy, 169 U. S. 366.
Atkin *v.* Kansas, 191 U. S. 222.
Bunting *v.* Oregon, 243 U. S. 426.
Erie R. Co. *v.* Williams, 233 U. S. 685.
Keokee, etc., Coal Co. *v.* Taylor, 234 U. S. 224.
Mutual Loan Co. *v.* Martell, 222 U. S. 225.
Jeffrey Mfg. Co. *v.* Blagg, 235 U. S. 571.
New York Cent. R. Co. *v.* White, 243 U. S. 188.
Mountain Timber Co. *v.* Washington, 243 U. S. 219.
Hawkins *v.* Bleakley, 243 U. S. 210.
Sturges, etc., Mfg. Co. *v.* Beauchamp, 231 U S. 320.
Truax *v.* Raich, 239 U. S. 33.
Brazee *v.* Michigan, 241 U. S. 340.
Dominion Hotel Co. *v.* Arizona, 249 U. S. 265.
Arizona Employers' Liability Cases, 250 U. S. 400.
Middletown *v.* Texas Power, etc., Co., 249 U. S. 152.
McLean *v.* Arkansas, 211 U. S. 539.
Easterling Lumber Co. *v.* Pierce, 235 U. S. 380.
Aluminum Co. *v.* Ramsey, 222 U. S. 251.
Louisville, etc., R. Co. *v.* Melton, 218 U. S. 36.
Missouri Pac. R. Co. v. Mackey, 127 U. S. 205.
Minneapolis, etc., R. Co. *v.* Herrick, 127 U. S. 210.
Minnesota Iron Co. *v.* Kline, 199 U. S. 593.
Mobile, etc., R. Co. *v.* Turnipseed, 219 U. S. 35.
Chicago, etc., R. Co. *v.* Hackett, 228 U. S. 559.
Missouri Pac. R. Co. *v.* Castle, 224 U. S. 541.
Chicago, etc., R. Co. *v.* McGuire, 219 U. S. 549.

[1] See same subject, pp. 598, 657, and 683.

North Pacific S. S. Co. *v.* Soley, 257 U. S. 216.
Dorchy *v.* Kansas, 264 U. S. 286.
Radice *v.* New York, 264 U. S. 292.

As to strikes, picketing, and secondary boycotts, see—

Truax *v.* Corrigan, 257 U. S. 312.

Statute allowing additional interest to be added to judgment for injured employee sustained on appeal held not denial of equal protection.

Twohy Bros. Co. *v.* Kennedy, 295 Fed. 462.

State Control Over Court Procedure

Change in construction of procedure statute.—There is no absolute right vested in the individual as against the power of the legislature to change modes of procedure. And a similar thought controls where the courts of the State have construed a statute as prescribing one form of procedure, and parties have acted under that construction, and then subsequently the same court has held that the statute was theretofore misconstrued, and really provided a different mode of procedure. This last adjudication can not be set aside in the Federal courts on the ground of an unjust discrimination or a denial of the equal protection of the laws.

Backus *v.* Union Depot Co., 169 U. S. 571.
Howard *v.* Kentucky, 200 U. S. 164.

Different tribunals for different persons.—When the protection of equal laws equally administered has been enjoyed, it can not be said that there has been a denial of the equal protection of the law within the purview of the fourteenth amendment only because the State has allowed one person to seek one forum and has not allowed another person, asserted to be in the same class, to seek the same forum, although as to both persons the law has afforded a forum in which the same and equal laws are applicable and administered.

Cincinnati St. R. Co. *v.* Snell, 193 U. S. 36.

Refusal of application to file supplementary answer.—The refusal of a State court to grant an application for leave to file a supplementary answer is not a denial of the equal protection of the laws when there is no abuse of discretion.

Sawyer *v.* Piper, 189 U. S. 154.

Quo warranto or indictment against corporation.—The right to bring *quo warranto* to oust a corporation charged with misusing its license to do business in the State, does not deny the equal protection of the laws to a corporation so proceeded against, when other corporations may be prosecuted in the same court for the same act by indictment with the right of trial by jury.

Standard Oil Co. *v.* Missouri, 224 U. S. 270.

Constitution of juries.—An accused has no legal right to a jury composed wholly or in part of his own race. All that he can

rightfully demand is a jury from which his own race is not excluded.

Virginia *v.* Rives, 100 U. S. 313.
See also—
Bush *v.* Kentucky, 107 U. S. 110.
Murray *v.* Louisiana, 163 U. S. 101.
Neal *v.* Delaware, 103 U. S. 370.
Smith *v.* Mississippi, 162 U. S. 592.
Williams *v.* Mississippi, 170 U. S. 213.
Carter *v.* Texas, 177 U. S. 442.
Tarrance *v.* Florida, 188 U. S. 519.
Rogers *v.* Alabama, 192 U. S. 226.
Martin *v.* Texas, 200 U. S. 316.
Franklin *v.* South Carolina, 218 U. S. 161.
Brown *v.* New Jersey, 175 U. S. 176.
Hayes *v.* Missouri, 120 U. S. 69.

Failure to provide method for enforcing attendance of nonresident witnesses.—The failure of the law to provide the method for enforcing the attendance of nonresident witnesses, and for the procuring and reception of their depositions, is not in a particular case a denial to the accused of the equal protection of the laws.

Minder *v.* Georgia, 113 Ga. 772, affirmed 183 U. S. 559.

Production of books and papers.—A statute providing for the production of books and papers by a corporation upon notice, and for its punishment as for contempt for neglecting or refusing to comply without reasonable cause, does not, because it is confined to corporations alone, deny them the equal protection of the laws.

Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541.
Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.

Costs generally.—A State statute which provides that "whenever it shall appear to the court or jury trying the case that the prosecution has been instituted without probable cause and from malicious motives, the name of the prosecutor shall be ascertained and stated in the finding; and such prosecutor shall be adjudged to pay the costs, and may be committed to the county jail until the same are paid, or secured to be paid," does not deny the equal protection of the laws, as the statute is applicable to all persons under like circumstances, and does not subject the individual to an arbitrary exercise of power.

Lowe *v.* Kansas, 163 U. S. 81.

Allowance for attorney's fees and damages—*In general.*—A statute providing for the recovery of reasonable attorney's fees in actions on small claims against all classes of defendants, individual and corporate, does not deny a defendant in such cases the equal protection of the laws.

Missouri, etc., R. Co. *v.* Cade, 233 U. S. 642.
Missouri, etc., R. Co. *v.* Harris, 234 U. S. 412.

In actions against railroads.—A statute which provides that in an action for certain claims against a railroad company, if the

plaintiff obtains judgment he shall be entitled to recover the amount of such claim and all costs, and in addition thereto, all reasonable attorney's fees, not to exceed $10, can not be sustained.

Gulf, etc., *v.* Ellis, 165 U. S. 156.
Atchison, etc., R. Co. *v.* Matthews, 174 U. S. 96.
Atchison, etc., R. Co. *v.* Vosburg, 238 U. S. 56.
Farmers', etc., Ins. Co. *v.* Dobney, 189 U. S. 305.

On certain insurance policies.—A statute which directs that life and health insurance companies, who shall default in payment of their policies, shall pay 12 per cent damages, together with reasonable attorney's fees, does not deny the equal protection of the laws in failing to impose the same conditions on fire, marine, and inland insurance companies, and on mutual benefit and relief organizations doing business through lodge and mutual relief benevolent associations.

Fidelity Mutual *v.* Mettler, 185 U. S. 325.
Manhattan Life *v.* Cohen, 234 U. S. 123.

In mandamus proceeding.—A statute allowing a successful plaintiff in a *mandamus* proceeding the right to recover reasonable attorney's fees does not deny the equal protection of the laws.

Missouri Pac. R. Co. *v.* Larabee, 234 U. S. 459.

Criminal Prosecutions

In general.—Equality of protection under the laws implies not only accessibility by each one, whatever his race, on the same terms with others to the courts of the country for the security of his person and property, but that in the administration of criminal justice he shall not be subjected, for the same offense, to any greater or different punishment.

Pace *v.* Alabama, 106 U. S. 583.
See also—
Leeper *v.* Texas, 139 U. S. 462.
Minder *v.* Georgia, 183 U. S. 559.
Bachtel *v.* Wilson, 204 U. S. 36.
Ocampo *v.* U. S., 234 U. S. 91.
Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541.
Bergemann *v.* Backer, 157 U. S. 655.
Kohl *v.* Lehlback, 160 U. S. 293.
Adams *v.* New York, 192 U. S. 585.
Gatewood *v.* North Carolina, 203 U. S. 531.
Brown *v.* New Jersey, 175 U. S. 172.
Lloyd *v.* Dollison, 194 U. S. 445.
Gardner *v.* Michigan, 199 U. S. 325.
Howard *v.* Kentucky, 200 U. S. 164.
Brooks *v.* Missouri, 124 U. S. 394.
Davis *v.* Texas, 139 U. S. 651.
Duncan *v.* Missouri, 152 U. S. 377.
Moore *v.* Missouri, 159 U. S. 673.

Refusal to amend the record.—The refusal of a State appellate court to amend a record so as to show that the accused was not

present in person or in counsel in that court at the time it affirmed the judgment of the trial court and fixed the time for carrying that judgment into execution is not a denial of the equal protection of the laws when the law of that State, as declared by its highest court, is that amendments of record of a court in derogation of a final judgment are not permitted in that State after the expiration of the term at which the judgment was rendered. The State law is applicable to all persons within the jurisdiction of the State.

Fielden *v.* Illinois, 143 U. S. 452.

Right to appeal.—There is no denial of the equal protection of the laws because in one district the State is allowed an appeal and such an appeal is not allowed in another district of the same State.

Mallett *v.* North Carolina, 181 U. S. 597.
Missouri *v.* Lewis, 101 U. S. 30.

Assuming that this clause could apply to the United States, an act of Congress which gives to the United States an appeal to the Supreme Court from a judgment sustaining a demurrer to an indictment and gives an appeal to a defendant to the circuit court of appeals only at the end of the trial, does not deny such defendant the equal protection of the laws.

U. S. *v.* Heinze, 218 U. S. 532.

"Habitual criminal" statutes.—A State statute providing that "Whoever has been twice convicted of crime, sentenced and committed to prison, in this or any other State, or once in this and once at least in any other State, for terms of not less than three years each, shall, upon conviction of a felony committed in this State after the passage of this act, be deemed to be an habitual criminal, and shall be punished by imprisonment in the State prison for twenty-five years," does not deny to anyone the equal protection of the laws, as the aggravated penalty prescribed affects alike all persons similarly situated.

McDonald *v.* Massachusetts, 180 U. S. 311.
Graham *v.* West Virginia, 224 U. S. 616.
Moore *v.* Missouri, 159 U. S. 678.

Effect of pardon for first offense.—As applied to one who had previously been convicted in a United States court and had been granted a pardon by the President after he had completed his term of service, a State habitual criminal statute does not deny any rights guaranteed by this amendment.

Carlesi *v.* New York, 233 U. S. 51.

Sentence and punishment—*In general.*—When by a State law, at the time of the trial and sentence of an accused person, the court in which he was tried and sentenced was a court *de jure* and the judge who tried and sentenced was at least a judge *de*

facto, and the sentence itself was valid, such sentence is not a denial of the equal protection of the laws.

In re Manning, 139 U. S. 504.

Different sentences.—Sentences imposed on a conviction of a common-law offense, more severe than ever before inflicted in the State for a like offense, and giving two of the codefendants longer terms than the third, do not amount to a denial of the equal protection of the laws.

Howard *v.* Fleming, 191 U. S. 135.

Excessive punishment.—A sentence of 14 years for the crime of perjury can not be held to be so grossly excessive as to be prohibited by this amendment when it does not exceed the limit prescribed by statute.

Collins *v.* Johnston, 237 U. S. 502.

Indeterminate sentence and parole.—An indeterminate sentence and parole act does not deny a person of the equal protection of the laws, who has been twice convicted of felony, because of the provision "that no prisoner who has been twice previously convicted of felony shall be eligible to parole under the provisions of this act."

Ughbanks *v.* Armstrong, 208 U. S. 481.

Death sentence for life termers guilty of assault.—A statute providing that "every person undergoing a life sentence in a State prison of this State, who, with malice aforethought, commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable with death," does not deny the equal protection of the laws as providing an exceptionable punishment for life termers.

Finley *v.* California, 222 U. S. 28.

Penalties and forfeitures.—There is no violation of this clause where States impose punitive penalties for loss resulting from neglect to safeguard life and property so long as the statute runs against all of a certain class as, for instance, railroad companies. So held in Missouri Pac. R. Co. *v.* Humes (115 U. S. 512), in which the court said (p. 523):

The statutes of nearly every State of the Union provide for the increase of damages where the injury complained of results from the neglect of duties imposed for the better security of life and property. * * * And experience favors this legislation as the most efficient mode of preventing, with the least inconvenience, the commission of injuries. * * * The statute makes no discrimination against any railroad company in its requirements. Each company is subject to the same liability. * * * There is no evasion of the rule of equality where all companies are subjected to the same duties and liabilities under similar circumstances.

Amend. 14.—Rights of Citizens Sec. 1.—Equal Protection—Criminal Prosecutions

See on this point, Barbier *v.* Connolly, 113 U. S. 27, and Soon Hing *v.* Crowley, 113 U. S. 703.

See also—

Minneapolis, etc., R. Co. *v.* Beckwith, 129 U. S. 26.
Minneapolis, etc., R. Co. *v.* Emmons, 149 U. S. 364.
Kansas City Sou. R. Co. *v.* Anderson, 233 U. S. 325.
Fidelity Mutual Life Assn. *v.* Mettler, 185 U. S. 308.
Iowa Life Ins. Co. *v.* Lewis, 187 U. S. 335.
Missouri, etc., R. Co. *v.* May, 194 U. S. 267.
National Cotton Oil Co. *v.* Texas, 197 U. S. 115.
Ex parte Young, 209 U. S. 123.
Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.
German Alliance Ins. Co. *v.* Hale, 219 U. S. 307.
Standard Oil Co. *v.* Missouri, 224 U. S. 270.
Yazoo, etc., R. Co. *v.* Jackson Vinegar Co., 226 U. S. 217.
Hutchinson *v.* Valdosta, 227 U. S. 303.
Wadley Sou. R. Co. *v.* Georgia, 235 U. S. 651.
Rail & River Coal Co. *v.* Ohio, 236 U. S. 338.
Rast *v.* Van Deman, 240 U. S. 342.

Section 2.—APPORTIONMENT—RIGHT TO VOTE.[1]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Negroes as Citizens

This clause removes the limitation in section 2 of the first article of the Constitution as to the counting of slaves and provides that they shall be counted as part of "the whole number of persons." In Elk *v.* Wilkins (112 U. S. 94) Justice Gray, in delivering the opinion of the court, said:

> Slavery having been abolished, and the persons formerly held as slaves made citizens, this clause fixing the apportionment of Representatives has abrogated so much of the corresponding clause of the original Constitution as counted only three-fifths of such persons.

[1] This section amends the first sentence of Art. I, sec. 2, cl. 3, as to representation in the House of Representatives. See p. 65.

Indians as Citizens [1]

Immediately following the sentence quoted above, it was said:

> But Indians not taxed are still excluded from the count, for the reason that they are not citizens. Their absolute exclusion from the basis of representation, in which all other persons are now included, is wholly inconsistent with their being considered citizens.

Reduction of State's Representation in Congress

Congress has never exercised the power conferred upon it by this section of reducing the representation of a State in the House of Representatives, but there can be no question of its power or its right to do so. Of its duty to do so, it alone is the judge. The amendment places the responsibility of enforcing its provisions upon that body. (Watson on the Constitution, Vol. II, p. 1653.)

See also—
McPherson *v.* Blacker, 146 U. S. 1
U. S. *v.* Kagama, 118 U. S. 375.

Section 3.—DISQUALIFICATION OF OFFICERS.

No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

This section is now of little importance, as Congress, by the act of June 6, 1898 (30 Stat. 432), removed the disabilities, as it was authorized to do by the last clause of the section.

Section 4.—PUBLIC DEBT.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or

[1] See also same subject, p. 199.

emancipation of any slaves; but all such debts, obligations, and claims shall be held illegal and void.

The object of this section is apparent. There were only a few cases arising under it.

Thorington *v.* Smith, 8 Wall. 1.
White *v.* Hart, 13 Wall. 646.
Osborn *v.* Nicholson, 13 Wall. 654.
Hanauer *v.* Woodruff, 15 Wall. 439.

Section 5.—ENFORCEMENT.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

When Congress Can Act

Until some State law has been passed, or some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the fourteenth amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity. The legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation, that is, such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing, or such acts and proceedings as the States may commit or take, and which, by the amendment, they are prohibited from committing or taking.

Civil Rights Cases, 109 U. S. 3, 13.
See also—
Strauder *v.* West Virginia, 100 U. S. 303.
Ex parte Virginia, 100 U. S. 339.
In re Rahrer, 140 U. S. 554.
U. S. *v.* Cruikshank, 92 U. S. 549.

In U. S. *v.* Harris (106 U. S. 629) and Baldwin *v.* Franks (120 U. S. 678), Revised Statutes, section 5519 was held unconstitutional as a provision for the punishment of a conspiracy, by individuals, within a State, to deprive citizens of rights guaranteed by this amendment.

Amendment 15.—RIGHT OF CITIZENS TO VOTE.[1]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

[1] See p. 30 for ratification.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

This amendment brings the right of United States citizens to vote within the protection of Congress. The right of suffrage is not coextensive with citizenship, and this amendment was not designed to confer the right upon anyone. It left the power to determine the qualifications of voters with the several States.

U. S. *v.* Reese, 92 U. S. 214, in which the act of Congress of May 31, 1870, laying a penalty on State election officers for refusal to receive vote of "any citizen" who had duly offered to qualify as voter was held unauthorized under this amendment.
Baldwin *v.* Franks, 120 U. S. 678.
U. S. *v.* Harris, 106 U. S. 629.
Minor *v.* Happersett, 21 Wall. 178.
U. S. *v.* Cruikshank, 92 U. S. 543.
In re Lockwood, 154 U. S. 116.

The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment, and can be exercised only when a qualified voter is denied the right to vote because of race, color, or previous condition of servitude, and it is to this extent only that the power of the State is limited by this clause. It operates to nullify a provision in a State constitution restricting the right of suffrage to the white race.

U. S. *v.* Reese, 92 U. S. 214.
McPherson *v.* Blacker, 146 U. S. 37.
Neal *v.* Delaware, 103 U. S. 389.
Ex parte Yarbrough, 110 U. S. 665.
Williams *v.* Mississippi, 170 U. S. 220.
Giles *v.* Harris, 189 U. S. 475.
Guinn *v.* U. S. 238 U. S. 347.
Meyers *v.* Anderson, 238 U. S. 368.
Mills *v.* Green, 159 U. S. 651.

A statute which purports to punish purely individual action can not be sustained as an appropriate exercise of the power conferred by this amendment on Congress to prevent action by the State through some one or more of its official representatives, and an indictment which charges no discrimination on account of race, color, or previous condition of servitude is likewise destitute of support by such amendment. Revised Statutes, section 5507, held repugnant to this amendment.

James v. Bowman, 190 U. S. 139.

AMENDMENTS 16–19.—RECENT.

Amendment 16.—INCOME TAX.[1]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

In General

It is clear on the face of this text that it does not purport to confer power to levy income taxes in a generic sense—an authority already possessed and never questioned—or to limit and distinguish between one kind of income taxes and another, but that the whole purpose of the amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived. In Brushaber *v.* Union Pac. R. Co. (240 U. S. 17) the court said:

> There is no escape from the conclusion that the amendment was drawn for the purpose of doing away for the future with the principle upon which the Pollock case was decided; that is, of determining whether a tax on income was direct not by a consideration of the burden placed on the taxed income upon which it directly operated, but by taking into view the burden which resulted on the property from which the income was derived.

See also—

Pollock *v.* Farmers', etc., Co., 157 U. S. 429; 158 U. S. 601.
Stanton *v.* Baltic Min. Co., 240 U. S. 103.
Tyee Realty Co. *v.* Anderson, 240 U. S. 115.
Peck *v.* Lowe, 247 U. S. 165.
Southern Pac. Co. *v.* Lowe, 247 U. S. 330.

Questions of taxation must be determined by viewing what was actually done rather than the declared purpose of the participants. When applying the sixteenth amendment and income tax laws enacted under it, the courts must regard matters of substance and not of mere form.

Weiss *v.* Stearn, 265 U. S. 242.
Burk-Waggoner Oil Assn. *v.* Hopkins, 296 Fed. 492.

In Smietanka *v.* Bank (257 U. S. 602) it was held that the income tax act made no provision for taxing income held and accumulated by a trustee for unborn and unascertained beneficiaries.

In De Ganay *v.* Lederer (250 U. S. 376) the court sustained a Federal tax upon the income from stock, bonds, and mortgages owned by alien nonresidents, but in the hands of a resident agent.

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[1] This amendment takes income taxes out of the apportionment provision of Art. I, sec. 2, cl. 3 For ratification, see p. 31.

In Atlantic Coast Line *v.* Daughton (262 U. S. 413) it was held that taxation of income from property, as distinguished from income of owner is constitutional.

In U. S. *v.* Boss and Peake, 285 Fed. 410, it was held that retrospective income tax law was not unconstitutional.

Taxation of Dividends

Congress was at liberty, under this amendment, to tax as income without apportionment everything that became income in the ordinary sense of the word after the adoption of the amendment, including dividends received in the ordinary course by a stockholder from a corporation, even though they were extraordinary in amount and might appear upon analysis to be a mere realization in possession of an inchoate and contingent interest that the stockholder had in surplus of corporate assets previously existing.

Lynch *v.* Hornby, 247 U. S. 339.

Stock Dividends

The word "income" as used in this amendment does not include a stock dividend. Such a dividened is capital and not income and can be taxed only if the tax is apportioned among the several States in accordance with Article 1, section 2, clause 3, and Article I, section 9, clause 4 of the Constitution.

Eisner *v.* Macomber, 252 U. S. 189, following Towne *v.* Eisner, 245 U. S. 418.
U. S. *v.* Phellis, 257 U. S. 156.
Rockefeller *v.* U. S., 257 U. S. 176.
Miles *v.* Safe Deposit Co., 259 U. S. 247.

Property Outside the United States

Congress has power to tax the income received by a native citizen of the United States domiciled abroad from property situated abroad.

Cook *v.* Tait, 265 U. S. 47.

Proceeds of Life Insurance

A construction of a war taxing act as imposing both an income and an estate tax on the proceeds of life insurance should be avoided unless required in express terms.

U. S. *v.* Supplee-Biddle Co., 265 U. S. 189.

Salary of Federal Judges

This amendment does not extend the taxing power to new or excepted subjects, but merely removes all occasion otherwise existing for an apportionment among the States of taxes laid on incomes from whatever source derived.

Evans *v.* Gore, 253 U. S. 245, reversing 262 Fed. 550, and holding that the salary of a Federal judge was immune from an income tax by virtue of Article III, section 1, prohibiting the diminishing of a judge's salary during his term of office.

Domestic and Foreign Corporations

Income tax not unconstitutional because of inequality as between domestic and foreign corporations.

National Paper Co. *v.* Edwards, 292 Fed. 633.

Amendment 17.—POPULAR ELECTION OF SENATORS.[1]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

In U. S. *v.* Aczel (219 Fed. 917) it was said that the right to vote for United States Senators is not derived merely from the constitution and laws of the State in which they are chosen but has its foundation in the Constitution of the United States.

Amendment 18.—PROHIBITION OF INTOXICATING LIQUORS.[2]

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

In General

This amendment is operative throughout the entire territorial limits of the United States, binds all legislative bodies, courts, public officers, and individuals within those limits, and of its own force invalidates every legislative act, whether by Congress,

[1] This amendment modifies Art. I, sec. 3. For ratification, see p. 31.
[2] See p. 32 for ratification.

by a State legislature, or by a Territorial assembly, which authorizes or sanctions what the amendment prohibits.

National Prohibition Cases, 253 U. S. 350.
See also—
Ex parte Dillon, 262 Fed. 563.
U. S. *v.* Colby, 265 Fed. 998.

For a definition of liberty in connection with this amendment, see U. S. *v.* Kaplan, 286 Fed. 963.

In Cunard S. S. Co. *v.* Mellon (262 U. S. 100) it was held that the carrying of intoxicating liquors as sea stores, for beverage purposes, through the territorial waters or into the ports and harbors of the United States by foreign or domestic merchant ships is forbidden by this amendment and the act.

In Ruppert v. Caffey (251 U. S. 264) the national prohibition act, in its provision that the words "beer, wine, or other intoxicating malt or vinous liquors," in the war prohibition act shall be hereafter construed to mean any such beverages which contain one-half of one per cent or more of alcohol by volume, was held constitutional.

For a case construing the war prohibition act, see U. S. *v.* Standard Brewery, 251 U. S. 210.

In Amos *v.* U. S. (255 U. S. 313) the search for and seizure of illicit whiskey in defendant's home by revenue agents without a search warrant or warrant of arrest were held unlawful and violations of the fourth and fifth amendments.

This amendment indicates no purpose to confiscate liquors lawfully owned when it became effective and intended for lawful use.

Street *v.* Lincoln Safe Dep. Co., 254 U. S. 88.

Under the Volstead act the owner of whiskey stored in a bonded warehouse can not secure its release upon payment of the tax for transportation to his dwelling for consumption there as a beverage.

Corneli *v.* Moore, 257 U. S. 491, distinguishing the Street case, *supra.*

Section 2 of the supplemental prohibition act of November 23, 1921, in so far as it prevents physicians from prescribing intoxicating malt liquors for medicinal purposes, held constitutional.

Everard's Breweries *v.* Day, 265 U. S. 545.

In Hawes *v.* Georgia (258 U. S. 1), it was held that a State law providing that a person prosecuted for permitting apparatus for distilling intoxicating liquors to be upon real estate actually occupied by him shall be *prima facie* presumed to have known of its presence, was not invalid.

Pennsylvania Brooks law, prohibiting sales without license, is not contrary to this amendment or the Volstead act.

Vigliotti *v.* Pennsylvania, 258 U. S. 403.

In U. S. *v.* Yuginovich (256 U. S. 462) it was said:

That Congress may, under the broad authority of the taxing power, tax intoxicating liquors notwithstanding their production is prohibited and

punished, we have no question. The fact that the statute in this aspect had a moral end in view as well as the raising of revenue, presents no valid constitutional objection to its enactment.

See—

License Tax Cases, 5 Wall. 462.
In re Kollock, 165 U. S. 526.
U. S. *v.* Moy, 241 U. S. 394.
U. S. *v.* Doremus, 249 U. S. 86.
U. S. *v.* Stafoff, 260 U. S. 477.

The transportation of intoxicating liquors across the United States from Canada to Mexico or the transshipment of such liquor from one British ship to another while within a port of the United States is prohibited by this amendment and the legislation thereunder.

Grogan *v.* Walker & Sons, 259 U. S. 80.

If national prohibition act, title 2, section 35, authorized the collector of internal revenue to assess on one selling liquor unlawfully the penalty therein designated as a tax without notice or hearing to the alleged offender and thereby to enforce the penalty by distraint, it denies due process of law.

Lipke *v.* Lederer, 259 U. S. 557.
Regal Drug Co. *v.* Wardell, 260 U. S. 386.

A person committing an act with respect to intoxicating liquors which is denounced as a crime by both national and state sovereignties may be punished under the law of each sovereignty, and this is not contrary to the double jeopardy provision of the Fifth Amendment.

U. S. *v.* Lanza, 260 U. S. 377.
Brede *v.* Powers, 263 U. S. 4.
Wyman *v.* U. S., 263 U. S. 14.

Scope and Effect of Amendment

In general.—The amendment "rendered obselete or repealed all earlier law that applied to, sanctioned and taxed distilled spirits for beverage purposes."

Violette *v.* Walsh, 272 Fed. 1014.

That portion of the act of July 23, 1892, as amended, which made possession of intoxicating liquor in the Indian country an offense and fixed its punishment, was not repealed, superseded, or modified by the national prohibition act.

Kennedy *v.* United States, 265 U. S. 344.

Instead of granting a right, it is a limitation of privilege.

Woods *v.* Seattle, 270 Fed. 315.

As to the effect of section 2 of the amendment, it has been said:

The truth is, in my judgment, that too much concern seems to have been manifested because of the incorporation of section 2 into the eighteenth amendment. The power thereby sought to be conferred upon Congress would have been conferred by the adoption and ratification of section 1 alone; a power being accorded to the Federal Government, Congress, even in the absence of an express grant, would be authorized to legislate in the

exertion of such power. Paragraph 18 of section 8 of the first article of the Federal Constitution specifically authorizes Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any department or official thereof."

Obviously this section would authorize Congress to enforce, by appropriate legislation, the Constitution or any amendment thereof. As was said by Hamilton in the thirty-first number of the Federalist, respecting the particular provision just quoted, together with the one contained in the second clause of article 6:

". . . It may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers."

So, too, the authority of the several States was not materially changed by the inclusion of the second section. As heretofore shown, they never surrendered their power, originally possessed in virtue of their sovereignty, to prohibit effectually within their respective limits the traffic in intoxicants. They still have that power. They merely granted to the Federal Government the same right within its domain. In addition, by the positive terms of the grant to themselves of "concurrent power," they were authorized to legislate in enforcement of the amendment—a lesser power, strictly speaking, than they already possessed, in virtue of their own sovereignty—and, if they wished, to enforce in their own courts the prohibitions and penalties to be provided by Congress for enforcement in the Federal courts.

Ex parte Crookshank, 269 Fed. 980.

This amendment being the paramount law on the subjects covered by it, all Federal or State laws, organic or statutory, that are in conflict therewith are, by the vital dominant force of the amendment, restrained in their operation or rendered inoperative to the extent of the repugnancy.

Hall *v.* Moran, 89 So. 104.
Burrows *v.* Moran, 89 So. 11.
Johnson *v.* State, 89 So. 114.
Wood *v.* Whitaker, 89 So. 118.

The amendment was not intended to stop the use of liquors for medicinal purposes.

Lambert *v.* Yellowley, 291 Fed. 640.
See also—
U. S. *v.* Freund, 290 Fed. 411.

On Article VI of Constitution.—This amendment enacts what is in effect a modification of that part of Article VI which makes congressional legislation supreme. It grants to Congress power to enact appropriate intrastate legislation, but makes that power, not paramount, supreme, or exclusive, but concurrent with the power of the States.

State *v.* Gauthier, 118 Atl. 380.

On fifth amendment.—As to the effect of the eighteenth amendment on the fifth amendment, it has been said:

> But it is contended that the fifth amendment has not been abrogated by the eighteenth amendment. Broadly speaking, this is, of course, true. The adoption of an amendment to the organic law, which does not expressly change or repeal a former provision, necessitates construction of the effect of such amendment upon the older provision. A constitutional amendment can not be unconstitutional. If it is in conflict with an older provision, so that the two can not be reconciled or construed together, clearly the older one must yield at the tangent of conflict to the newer law. Courts have found themselves compelled to adopt, for the construction of constitutional provisions, rules strikingly similar to the rules used in construing statutes. It may be a matter of regret that age-old provisions making for the liberty of action of the citizen have been encroached upon, and to a degree whittled away; but this is not a matter wherein the courts may relieve. It is a political question and not a judicial one.
>
> It follows that, if a newer constitutional amendment in point of time of adoption permits, as the eighteenth amendment obviously does, the passage of a law which forbids the transportation of whisky, a law which is well within the constitutional grant of power on this point is not unconstitutional, even though the effect of such a law may be to encroach upon the rights given by older provisions of the organic law, and theretofore deemed to be inalienable.

Corneli *v.* Moore, 267 Fed. 456.

On tenth amendment.—This amendment neither abridged nor abrogated the police power reserved by the States by the tenth amendment to the Constitution, and hence does not repeal a State prohibition act.

Hess *v.* State, 135 N. E. 145.

On trade-mark rights.—The eighteenth amendment to the Constitution and laws for its enforcement, relating to the subject of prohibition, have compelled transition from the production and sale of alcoholic beverages, which calls for liberal protection of trade-mark rights affected by this enforced change.

Sexton *v.* Schoenhofen Co., 273 Fed. 327.

On obligation of lessee.—A lessee is not released from liability for rent under a lease of premises "to be used and occupied as a café and for no other purpose whatsoever" merely because he was subsequently deprived of their use for the sale of intoxicating liquors for beverage purposes for the remainder of the term by the eighteenth amendment to the Federal Constitution and the Volstead Act; it appearing that no provision was made in the lease for such a contingency.

Proprietor's Realty Co. *v.* Wohltmann, 112 Atl. 410.
Goldburg *v.* Calendar, 113 Atl. 170.

Effect on State Statutes

In general.—There is nothing in the amendment indicating an intention to repeal or supersede the legislation of the several States, whenever the enforcement of such legislation would aid in carrying into effect the provisions of the amendment.

State *v.* Hartley, 106 S. E. 766.
Shreveport *v.* Marx, 86 So. 602.

Enforcement by Congress

Police power.—If Congress can not effectively enforce the provisions of this amendment, except by the exercise of the police power, it is well settled that it may exert such power.

Piel *v.* Day, 278 Fed. 223.

"Concurrent Power" of Congress and States to Enforce Amendment by "Appropriate Legislation"

Power of Congress.—Practically the effect of the eighteenth amendment was to confer on Congress the same powers to deal with the manufacture, sale, and transportation of intoxicating liquors intrastate as it formerly possessed interstate, and also to confer on Congress the same police powers therein, and in any State, that the several States themselves had within their own territorial limits, on the same subjects, before the adoption of the eighteenth amendment. Taking this view, which is a hurried expression and construction of a far-reaching condition, and of a far-reaching statute, it follows that what a State could do within its own territorial limits before the adoption of the eighteenth amendment to stamp out the manufacture, sale, and transportation of liquor Congress may now do.

U. S. *v.* Cohen, 268 Fed. 420.
Rose *v.* U. S., 274 Fed. 245.
Street *v.* Lincoln Safe Deposit Co., 267 Fed. 706.

"Concurrent power."—The meaning of this term was explained by the court in the old case of Houston *v.* Moore (5 Wheat. 33) in this language:

> Why may not the same offense be punishable both under the laws of the States and of the United States? Every citizen of a State owes a double allegiance. He enjoys the protection and participates in the government of both the State and the United States. . . . The actual exercise of this concurrent right of punishing is familiar to everyday's practice. The laws of the United States have made many offenses punishable in their courts, which were and still continue punishable under the laws of the States. Witness the case of counterfeiting the current coin of the United States, . . . in which the State right of punishing is expressly recognized and preserved. Witness also the crime of robbing the mail on the highway, which is unquestionably cognizable as highway robbery under the State laws, although made punishable under those of the United States.

See also—
U. S. *v.* Holt, 270 Fed. 639.
U. S. *v.* Peterson, 268 Fed. 864.
Ballaine *v.* Alaska N. Ry. Co., 259 Fed. 183.

In U. S. *v.* McCann (281 Fed. 880) the court said:

> The State retains the power to regulate intrastate traffic in intoxicating liquors which it always had subject to the limitation that such regulation must not conflict with the eighteenth amendment or Federal legislation passed pursuant thereto. The assumption that the State statute in question was not passed in the exercise of this power, but in the exercise of a power delegated to it by the Federal Government, is entirely without foundation. . . . It is true that the Federal Government may and in certain instances has adopted agencies of the State for the purpose of

administering its own laws, as, for instance, when State courts administer the Federal naturalization laws, but no instance has been cited where the State itself has been made an instrumentality for enforcing Federal laws. It has, on the contrary, been held in a number of cases that the States do not, by adopting the eighteenth amendment, deprive themselves of the power to legislate upon intrastate traffic in intoxicating liquors, and that in so legislating they do not enforce the acts of Congress, but the amendment itself.

"Appropriate legislation."—The term "appropriate legislation," as used in this section, necessarily means such legislation as will tend to make this constitutional provision completely operative and effective.

Rose *v.* U. S., 274 Fed. 245.
Ex parte Virginia, 100 U. S. 339.
United States *v.* Reese, 92 U. S. 214.
State *v.* Ceriani, 113 Atl. 316.
Ex parte Gilmore, 228 S. W. 199.

Delegation of power to Commissioner to issue and revoke permits held valid.

Schnitzler *v.* Yellowley, 290 Fed. 849.

Powers of States.—The prohibiting by national legislation of traffic in liquor with more than one-half of 1 per centum of alcohol by volume does not prevent the State, or the city within the granted police power, to decide upon measures that are needful for the protection of its people by prohibiting possession or delivery of intoxicants fit for beverage purposes, under the guise of innocent preparations not within the national prohibition act.

Woods *v.* Seattle, 270 Fed. 315.
U. S. *v.* Peterson, 268 Fed. 864.
Ex parte Ramsey, 265 Fed. 950.

Extent of legislation by State.—It would never be competent for a State, in a matter respecting the use of liquor, to enlarge upon rights limited by congressional action. It might legislate more rigorously than Congress, in furtherance of more complete prohibition; but, in view of the supremacy of Congress in the field, it could not legislate more liberally. Nor would the fact that different, particularly more drastic, penalties are prescribed by the inferior sovereignty, necessarily result in their invalidity.

Ex parte Crookshank, 269 Fed. 980.

Application of law in Alaska.—Alaska Dry Act and National Prohibition Act both in force in Alaska.

Peterson *v.* U. S., 297 Fed. 1000.

Constitutionality

Ratification.—In Carson *v.* Sullivan (223 S. W. 571) the court said:

A recent decision of the Supreme Court of the United States (see National Prohibition Cases, 253 U. S. 350) has foreclosed all discussion of this question in holding that the referendum provisions of State constitu-

tions and statutes can not be applied consistently with the Constitution of the United States in the ratification or rejection of amendments to that constitution, and that the eighteenth amendment, prohibiting the manufacture, etc., of intoxicating liquors for beverages, is within the power to amend reserved by article 5 of the United States Constitution; in other words, that the "legislatures of three-fourths of the . . . States," as the words are employed in that article (5), has reference to legislative bodies as they were known at the time of the adoption of the Constitution, and not by any other body or the people generally. The action of the respondents, therefore, in attempting to refer the legislative ratification of the eighteenth amendment to the people, was without authority, and the trial court was in error in so ruling.

Due process of law is not abrogated by the eighteenth amendment.

U. S. *v.* Crossen, 264 Fed. 459.

Power of Congress to fix reasonable time for ratification; seven years held reasonable.

Dillon *v.* Gloss, 256 U. S. 368, in which it was also held that the amendment became part of the Constitution on January 16, 1919, when ratification by the States was consummated, and not on date when ratification was proclaimed by the Secretary of State.

The action of the General Assembly of Ohio ratifying this amendment can not be referred to the electors of the State, the provisions of the State constitution requiring such a referendum being inconsistent with the Constitution of the United States.

Hawke *v.* Smith, 253 U. S. 221.

Abatement and Injunction

Temporary injunction abating nuisance may issue without notice.

McFarland *v.* U. S., 295 Fed. 648.
See also—
U. S. *v.* Zukauckas, 293 Fed. 756.
Capawana *v.* U. S., 294 Fed. 153.
Westmoreland Brewing Co. *v.* U. S., 294 Fed. 740.
U. S. *v.* Margolis, 289 Fed. 161.
U. S. *v.* Reisenweber, 288 Fed. 520.

Criminal Prosecutions

Imprisonment not authorized for first offense of possessing liquors or stills.

Troy *v.* U. S., 288 Fed. 851.
Nosowitz *v.* U. S., 282 Fed. 575.

Presumption from possession held sufficient to establish nuisance.

Barker *v.* U. S., 289 Fed. 249.

Evidence of single sale of liquor held not to sustain conviction for maintaining nuisance.

Muncy *v.* U. S., 289 Fed. 780.

On charge of maintaining common nuisance, evidence of bad reputation of place is admissible.

Ryan *v.* U. S., 285 Fed. 734.

Amend. 18.—Prohibition.

National prohibition act forbids possession of property for manufacture of liquor.

U. S. *v.* Horton, 282 Fed. 731.
See also—
Anderson *v.* U. S., 294 Fed. 593.
Goodfriend *v.* U. S., 294 Fed. 148.
Morgan *v.* U. S., 294 Fed. 82.
Remus *v.* U. S., 291 Fed. 513.
Huth *v.* U. S., 295 Fed. 35.
Hohenadel Brew. Co. *v.* U. S., 295 Fed. 489.
Kane *v.* U. S., 295 Fed. 674.
Ferry *v.* U. S., 292 Fed. 583.

Guilt of unlawful possession may be inferred from its concealment on defendant's premises.

Parks *v.* U. S., 297 Fed. 834.

Licenses and Taxes

Tax assessed by collector for violation of prohibition act can not be enforced by distraint and sale of property.

U. S. *v.* Zerbey, 282 Fed. 332.

Commissioner of Internal Revenue authorized to determine obligations and conditions of bond given for permit to purchase liquor.

U. S. *v.* Wandmaker, 292 Fed. 24.
See also—
Ginsberg *v.* Yellowley, 290 Fed. 262.
O'Sullivan *v.* Potter, 290 Fed. 844.
New Jersey Drug Co. *v.* Brown, 289 Fed. 108.

Offenses

Landlord, aiding and abetting tenant in manufacture of liquor on premises, may be prosecuted as principal, or for maintaining nuisance.

Reynolds *v.* U. S., 282 Fed. 256.

Same acts may constitute separate offenses of unlawful possession of liquor and maintaining nuisance.

Singer *v.* U. S., 288 Fed. 695.
See also—
Huth *v.* U. S., 295 Fed. 35.
Massei *v.* U. S., 295 Fed. 683.
Hattner *v.* U. S., 293 Fed. 381.
Remus *v.* U. S., 291 Fed. 513.
International Mercantile Marine *v.* Stuart, 285 Fed. 79.

Single sale for nonbeverage purposes, without seller's permit, to buyer, having buyer's permit, held not illegal.

Smulyan *v.* U. S., 293 Fed. 283.
See also—
U. S. *v.* Skilken, 293 Fed. 916.
Duffy-Mott Co. *v.* Blair, 292 Fed. 986.
Keefe *v.* Clark, 287 Fed. 372.
U. S. *v.* Illig, 288 Fed. 939.

Searches, Seizures, and Forfeitures

United States vessel, controlled by Shipping Board, not subject to forfeiture under national prohibition act.

The Coldwater, 283 Fed. 146.

Foreign vessel, brought into American waters by pirates, held not subject to penalties or forfeiture.

The Louise F., 293 Fed. 933.

Liquor in plain sight may be seized without search warrant. Where officers smelled fumes of a still, search without warrant held justified.

Vachina *v.* U. S., 283 Fed. 35.
McBride *v.* U. S., 284 Fed. 416.
U. S. *v.* Hilsinger, 284 Fed. 585.
U. S. *v.* Daison, 288 Fed. 199.
Boyd *v.* U. S., 286 Fed. 930.

Holding seized liquor, without forfeiture, held trespass *ab initio.*

Godat *v.* McCarthy, 283 Fed. 689.
U. S. *v.* Mattingly, 285 Fed. 922.
Giles *v.* U. S., 284 Fed. 208.
U. S. *v.* Liquors, 289 Fed. 278.
In re Intoxicating Liquors, 291 Fed. 918.
U. S. *v.* Cooper, 295 Fed. 709.
Jackson *v.* U. S., 295 Fed. 620.

Arrest of defendant while unlawfully transporting liquor authorizes seizure of liquor.

Bell *v.* U. S., 285 Fed. 145.

Search of person without warrant held unlawful, except with owner's consent.

Snyder *v.* U. S., 285 Fed. 1.
Maldonado *v.* U. S., 284 Fed. 853.

But it was held in Cabitt *v.* Potter, 293 Fed. 54, that search of premises without warrant was lawful.

Search warrant is exclusive remedy to secure possession of property used in violation of prohibition act.

U. S. *v.* Franzione, 286 Fed. 769.
Jozwich *v.* U. S., 288 Fed. 831.
Park *v.* U. S., 294 Fed. 776.
U. S. *v.* O'Connor, 294 Fed. 584.
Murby *v.* U. S., 293 Fed. 849.
U. S. *v.* Palma, 295 Fed. 149.
Legman *v.* U. S., 295 Fed. 474.
U. S. *v.* Harnich, 289 Fed. 256.
U. S. *v.* McBride, 287 Fed. 214.

Federal officer can not be aided by State search warrant not in accordance with the Federal law.

Singleton *v.* U. S., 290 Fed. 130.

Prohibition agent not "civil officer" to whom search warrant may be issued.

U. S. *v.* Musgrave, 293 Fed. 203.

Amend. 18.—Prohibition.

Federal prohibition agent can not obtain search warrant on information and belief, as authorized by internal revenue law.

U. S. *v.* Spencer, 292 Fed. 871.

Owner of automobile used for transportation can not avoid forfeiture on mere claim of want of knowledge of illegal use.

U. S. *v.* Montgomery, 289 Fed. 125.
U. S. *v.* Kaplan, 286 Fed. 963.
U. S. *v.* Story, 294 Fed. 517.
U. S. *v.* Torres, 291 Fed. 138.

Petitioner for return of liquor unlawfully seized not required to prove his lawful possession.

U. S. *v.* Descy, 284 Fed. 724.
U. S. *v.* Dziadus, 289 Fed. 837.
U. S. *v.* Westmoreland Brew. Co., 294 Fed. 735.
Friedman *v.* Yellowley, 290 Fed. 248.
Margie *v.* Potter, 291 Fed. 285.
U. S. *v.* Jensen, 291 Fed. 668.
U. S. *v.* Vatune, 292 Fed. 497.
Chicco *v.* U. S., 284 Fed. 434.

Amendment 19.—RIGHT OF CITIZENS TO VOTE.[1]

The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Validity of adoption.

Leser *v.* Garnett (258 U. S. 130) was a suit by qualified voters of Maryland to require the Maryland Board of Registry to strike the names of women from the register of voters upon the grounds that the State constitution limits the suffrage to men and that this amendment to the Federal Constitution was not validly adopted. In this case the court said:

> The first contention is that the power of amendment conferred by the Federal Constitution, and sought to be exercised, does not extend to this amendment because of its character. The argument is that so great an addition to the electorate, if made without the State's consent, destroys its autonomy as a political body. This amendment is in character and phraseology precisely similar to the fifteenth. For each the same method of adoption was pursued. One can not be valid and the other invalid. That the fifteenth is valid, although rejected by six States, including Maryland, has been recognized and acted on for half a century. See United *v.* Reese, 92 U. S. 214; Neale *v.* Delaware, 103 U. S. 370; Guinn *v.* United States, 238 U. S. 347; Myers *v.* Anderson, 238 U. S. 368. The suggestion that the fifteenth was incorporated in the Constitution, not in accordance with law, but practically as a war measure, which has been validated by acquiescence, can not be entertained.
>
> The nineteenth amendment is in the precise terms of the fifteenth, with the substitution of the word "sex" for the words "race, color, or previous condition of servitude." It has been repeatedly held by the Supreme

[1] See p. 33 for ratification.

Amend. 19.—Right of citizens to vote.

Court of the United States that the fifteenth amendment does not confer upon colored men the right of suffrage; it only forbids discrimination.

U. S. *v.* Reese, 92 U. S. 214.

Fairchild *v.* Hughes (258 U. S. 126) was a proceeding to have the amendment declared void, but the court held that a private citizen is not entitled " to institute in the Federal courts a suit to secure by indirection a determination whether a statute if passed, or a constitutional amendment about to be adopted, will be valid."

The ratification of this amendment by the legislature of Ohio can not be referred to the electors of the State; the Ohio constitution in requiring such a referendum is inconsistent with the Constitution of the United States.

Hawke *v.* Smith, 253 U. S. 231.

Effect of amendment of State constitution.—In Opinion of Justices (113 Atl., 614) it was held that, in view of the enactment of this amendment, which in affect amended article 2, section 1, of the Maine constitution regarding the qualifications of voters, the governor of that State could appoint women as justices of the peace.

Amendment as qualifying women for jury service.—This amendment does not operate in terms or by implication to qualify women as jurors. It requires legislation to do that.

State *v.* James, 114 Atl., 553, wherein it was held that a male defendant could not raise the objection that women were not drawn for jury service.

This amendment does not *ipso facto* render women eligible to serve as jurors.

State *v.* Walker, 185 N.W. 619.
State *v.* Mittle, 113 S.E. 335.

This amendment, in terms, refers only to the right of women to vote. Accordingly, a State statute providing that " No woman shall be drawn for jury service unless she shall have previously filed with the clerk of the district court a written declaration of her desire to be subject to such service " is not invalid as being in violation of this amendment.

State *v.* Bray, 95 So. 417.

But where under the statutes of a State qualified electors of the State, possessing other specified requisite qualifications, are competent jurors, women of the State are eligible for jury service, since this amendment makes them qualified electors.

State *v.* Hickman, 193 N.W. 21.

Liberty of Contract

In Adkins *v.* Children's Hospital (261 U. S. 525) the court said that restrictions on the liberty of contract can not be legally imposed on women in view of their present equal status before the law.

ACTS OF CONGRESS DECLARED UNCONSTITUTIONAL BY THE SUPREME COURT OF THE UNITED STATES

ACTS OF CONGRESS DECLARED UNCONSTITUTIONAL BY THE SUPREME COURT.

Act of September 24, 1789 (1 Stat. 80, sec. 13): This section authorized the Supreme Court to issue writs of *mandamus* "in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States." In a suit for a *mandamus* to the Secretary of State, held, that the court had no jurisdiction, since the statute purporting to extend it to cases not named in the Constitution was unconstitutional. (See Art. III, sec. 2, cl. 2.)

Marbury *v.* Madison, 1 Cranch 137.

Acts of February 25, 1862 (12 Stat. 345), and March 3, 1863 (12 Stat. 709): Clause in legal tender acts making United States notes legal tender for all private and public debts held unconstitutional so far as it applied to debts contracted prior to passage of the act. (See Art. I, sec. 8, cl. 2.)

Hepburn *v.* Griswold, 8 Wall. 603.[1]

Act of March 3, 1863 (12 Stat. 765): Section 14 provided that judgments of the Court of Claims should be estimated for by the Secretary of the Treasury before being paid. Held, that this amounted to a denial of judicial power in the Court of Claims, hence the allowance of an appeal to the Supreme Court was unauthorized. (See Art. III, sec. 1.)

Gordon *v.* U. S., 2 Wall. 561; 117 U. S. 697.

Act of March 3, 1863 (12 Stat. 755, sec. 5): Statute provided for removal to United States circuit courts of cases brought in State courts against Federal officers for arrests, etc., made under authority of the President, the circuit court to try the facts and the law as though the case had been originally brought there. This case was removed after a trial by jury in the State court and a verdict for plaintiff. Held, that act was unconstitutional under the seventh amendment, which provides that "No fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the common law."

Justices *v.* Murray, 9 Wall. 274.

Acts of June 30, 1864 (13 Stat. 281, sec. 116); March 3, 1865 (13 Stat. 479, sec. 1); July 13, 1866 (14 Stat. 137, sec. 9); March 2, 1867 (14 Stat. 477, sec. 13): Held, that these acts could not constitutionally be applied so as to tax the official salary of a judge of a State court. (See Art. I, sec. 8, cl. 1.)

Collector *v.* Day, 11 Wall. 113.

[1] This decision was overruled in the Legal Tender Cases (12 Wall. 457).

Act of June 30, 1864 (13 Stat. 284, sec. 112), amended July 13, 1866 (14 Stat. 138): The city of Baltimore had issued its bonds on behalf of the Baltimore & Ohio Railroad, taking a mortgage. Section 122, above, laid a tax of 5 per cent on the interest of bonds of railroads, etc. The Baltimore & Ohio refused to pay; held, that the tax was a tax on the creditor, and that it could not constitutionally be collected from the city of Baltimore, which was a part of the sovereign power of the State. (See Art. I, sec. 8, cl. 1.)

U. S. *v.* Railroad Co., 17 Wall. 322.

Act of June 30, 1864 (13 Stat. 311): The act authorized transfer of prize causes from the circuit court to the Supreme Court. Held, that the Supreme Court had no jurisdiction under this act, its jurisdiction in prize cases being under the Constitution appellate only. (See Art. III, sec. 2, cl. 2.)

The *Alicia*, 7 Wall. 571.

Act of January 24, 1865 (13 Stat. 424): Act prohibited all persons from practice before the Federal courts without taking a specified test oath. Garland served in the Confederate Congress, but was pardoned by the President and admitted to the bar of the Supreme Court, the act being held unconstitutional as *ex post facto* and as an interference with the President's pardoning power. (See Art. I, sec. 9, cl. 3, and Art. II, sec. 2, cl. 1.)

Ex parte Garland, 4 Wall. 333.

Act of March 2, 1867 (14 Stat. 484): Statute made it a misdemeanor to sell oil for illuminating purposes inflammable at a temperature less than 110° Fahrenheit. Held unconstitutional as being merely a police regulation of trade within the State. (See Art. I, sec. 8, cl. 3.)

U. S. *v.* De Witt, 9 Wall. 41.

Act of May 31, 1870 (16 Stat. 140): Section 3 laid a penalty on State election officers, etc., for refusal to receive vote of "any citizen" who had duly offered to qualify as voter; and section 4 penalized the obstruction of "any citizen" from qualifying as a voter. Held, that not being limited to discrimination on account of race, color, or previous condition of servitude, this legislation was beyond the limit of the fifteenth amendment and was unauthorized.

U. S. *v.* Reese, 92 U. S. 214.

Act of July 12, 1870 (16 Stat. 235): The act carrying appropriations for the payment of judgments of the Court of Claims contained a proviso that no pardon of the President, etc., should be admissible to establish the standing of any claimant or his right to bring suit, etc., under the abandoned and captured property acts. Held unconstitutional as an interference with the pardoning power of the President; and, further, since the party in question had received a judgment of the Court of Claims, affirmed by the Supreme Court,

it was an interference with the judicial power. (See Art. II, sec. 2, cl. 1, and Art. III, sec. 1.)

U. S. *v.* Klein, 13 Wall. 128.

Revised Statutes, section 860:[1] Provided that no evidence obtained from a witness by means of a judicial proceeding should be used against him in any criminal proceedings, etc. Refusal to answer certain questions upheld and act declared invalid, in view of the fifth amendment, because not affording the witness absolute immunity against future prosecution for the offense to which the question related.

Counselman *v.* Hitchcock, 142 U. S. 547.

Revised Statutes, sections 1977, 1978, 1979, 5508, and 5510 give the United States courts no jurisdiction of a charge of conspiracy made and carried out in a State to prevent citizens of African descent from making or carrying out contracts and agreements to labor. Held: Unless the thirteenth amendment vests jurisdiction in the National Government, the remedy for wrong committed by individuals in such cases is through State action and State tribunals.

Hodges *v.* U. S., 203 U. S. 1.

Revised Statutes, sections 4937–4947: These sections were trade-mark regulations which in terms applied to all commerce, while congressional authority is under the Constitution limited to interstate commerce. The act of August 14, 1876 (19 Stat. 141), approved in pursuance of the above legislation was also condemned as applied to State commerce. (See Art. I, sec. 8, cl. 3.)

Trade-mark Cases, 100 U. S. 82.

Revised Statutes, section 5132, subdivision 9,[1] made criminal the obtaining of goods under false pretenses by a person against whom within three months thereafter bankruptcy proceedings should be commenced, and the court held that that is a matter which concerned only the State in which the act was committed. (See Art. I, sec. 8, cl. 4.)

U. S. *v.* Fox, 95 U. S. 670.

Revised Statutes, section 5507,[1] made criminal the hindrance by individuals of the right of suffrage guaranteed by the fifteenth amendment. Held, that the amendment applied only to action by the United States or the several States.

James *v.* Bowman, 190 U. S. 127.

Revised Statutes, section 5519: A statute penalizing conspiracy by individuals to deprive any person of the equal protection of the laws, being directed against private action, without reference to the laws of the State, is not authorized by the thirteenth, fourteenth, or fifteenth amendments or secion 2 of Article IV of the Constitution.

U. S. *v.* Harris, 106 U. S. 629; Baldwin *v.* Franks, 120 U. S. 678.

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[1]Act has been expressly repealed.

Revised Statutes (D. C.), section 1064: Statute dispensing with jury in prosecutions by information in the police court of the District of Columbia. Held unconstitutional as a basis for conviction and sentence by the police court on an information for conspiracy; the provision of the Constitution requiring jury in trial for crimes, being in force in the District of Columbia. (See Art. III, sec. 2, cl. 3.)

Callan *v.* Wilson, 127 U. S. 540.

Act of June 22, 1874 (18 Stat. 186): The act authorized the court, in civil proceedings under the revenue laws, to require the production of private papers, etc., in an information for forfeiture of certain goods. Held, that the act was unconstitutional as repugnant to the fourth amendment restricting unreasonable searches and seizures, and to the spirit of the fifth amendment, the proceeding being criminal in effect.

Boyd *v.* U. S., 116 U. S. 616.

Act of March 1, 1875 (18 Stat. 335, c. 114): Statute declared all persons entitled to equal enjoyment of facilities of inns, public conveyances, etc., and stated a penalty on persons violating this provision. Held, that fourteenth amendment applied to State action, and thirteenth amendment related only to slavery and involuntary servitude; hence no constitutional basis for the act.

Civil Rights Cases, 109 U. S. 3; Butts *v.* Merchants Transp. Co., 230 U. S. 126.

Act of March 3, 1875 (18 Stat. 479):[1] Statute made a judgment against an embezzler of United States property "conclusive evidence" in a prosecution against a receiver of the stolen property. Held unconstitutional under the sixth amendment, which entitles an accused person to be confronted with the witnesses against him.

Kirby *v.* U. S., 174 U. S. 47.

Act of August 11, 1838 (25 Stat. 400, 411): The power of Congress to regulate commerce among the States, granted by Art. I, sec. 8, cl. 3, is subject to the limitations imposed by the fifth amendment, requiring that just compensation be paid for private property taken for public uses, so that in condemning a certain lock and dam just compensation includes a payment for the franchise to take tolls.

Monongahela Nav. Co. *v.* U. S., 148 U. S. 312.

Act of May 5, 1892 (27 Stat. 25): This act prescribed a term of imprisonment at hard labor for Chinese persons convicted of illegal residence in the United States. Held, that Wong Wing, though an alien, being within the territory of the United States, was entitled to the benefits of the fifth and sixth amendments; that is, to a judicial trial to establish his guilt. Under the act Chinese were given summary hearing before a justice or commissioner.

Wong Wing *v.* U. S., 163 U. S. 228.

Act of August 27, 1894 (28 Stat. 509): The act laid taxes upon rents or income derived from real estate, or from the interest on municipal bonds. Held, that the tax on income from real estate

was a direct tax within the meaning of section 9 of Article I of the Constitution, and that the tax on interest on municipal bonds was a tax on the power of the State, etc., to borrow money, and therefore repugnant to the Constitution.

Pollock *v.* Farmers', etc., Co., 157 U. S. 429; 158 U. S. 601.

Act of January 30, 1897 (29 Stat. 506): Act made it unlawful to give or sell, etc., intoxicating liquors to any Indian to whom allotment of land had been made, while the title is held in trust by the Government, etc. Held, that an Indian, upon an allotment being made, becomes a citizen of the United States and no longer a ward of the Government, and that the district court had no jurisdiction, under this statute, to punish a sale of liquor to an allottee Indian. (See amend. 14.—"Citizenship.")

Matter of Heff, 197 U. S. 488.

Act of June 1, 1898 (30 Stat. 424):[1] Act declared interstate carriers guilty of a misdemeanor who should threaten any employee with loss of employment because of his membership in labor organization. Held, that the power to regulate interstate commerce means power to prescribe rules governing such commerce having a substantial relation to the commerce regulated; that there was no such real connection in the present case. (See Art. I, sec. 8, cl. 3.)

Adair *v.* U. S., 208 U. S. 161.

Act of June 13, 1898 (30 Stat. 448):[1] Stamp tax on foreign bills of lading held in conflict with Article I, section 9, clause 5, of the Constitution, as in effect a duty on exports.

Fairbank *v.* U. S., 181 U. S. 283.

Act of June 13, 1898 (30 Stat. 448, 460):[1] The act laid a tax of $3 to $10 on the charter parties of "any ship or vessel or steamer." Held, that in so far as it related to the charter party of a vessel in foreign trade, it was invalid, being in substance a tax on exportation, and, as such, a tax on the exports.

U. S. *v.* Hvoslef, 237 U. S. 1.

Act of June 6, 1900 (31 Stat. 321, 358): Provision in the Alaska Code that in trial for a misdemeanor six persons should constitute a legal jury held unconstitutional, since from the treaty of acquisition and subsequent legislation it is apparent that Alaska has been incorporated into the United States and is therefore entitled to the benefit of the sixth amendment.

Rassmussen *v.* United States, 197 U. S. 516.

Act of March 3, 1901 (31 Stat. 1341): An appeal by the United States, in a prosecution for murder in which the defendant had been found not guilty, taken under section 935 of the District of Columbia Code, was dismissed, such an appeal being practically a moot case and a decision thereon not the exercise of judicial power. (See Art. III, sec. 2, cl. 2.)

U. S. *v.* Evans, 213 U. S. 297.

Act of June 11, 1906 (34 Stat. 232): The act made interstate carriers liable to their employees for injuries, etc., resulting from negligence of their officers, of insufficiency of roadbed, etc. Whole act held unconstitutional because expressed in general language which would

cover cases occurring strictly within the limits of one State, as to which Congress has no power under the commerce clause. (Art. I, sec. 8, cl. 3.)

Employers' Liability Cases, 207 U. S. 463.

Act of February 20, 1907 (34 Stat. 898, sec. 3):[1] Statute made it felony to harbor an alien prostitute within three years of entry. An indictment against a person harboring such an alien, without knowledge of her alienage and not in connection with her entry, was quashed on ground that the jurisdiction of Congress over immigration does not extend to such an exercise of the police power. (See Amendment 14.)

Keller *v.* U. S. 213 U. S. 138.

Act of March 1, 1907 (34 Stat. 1015, 1028): Statute authorized certain Indians to bring suit in the Court of Claims to "determine the validity of any acts of Congress passed since the said act of July 1, 1902, in so far as said acts, or any of them, attempt to increase or extend the restrictions upon alienation, encumbrance, or the right to lease the allotments of lands of Cherokee citizens," etc. Petition brought under this act dismissed for want of jurisdiction, such a suit not being in the sense of the Constitution a "case or controversy," as specified in Article III, section 2.

Muskrat *v.* U. S., 219 U. S. 346.

Act of September 1, 1916 (39 Stat. 675): Act prohibited interstate transportation of goods made in factories employing child labor. Held unconstitutional as exceeding the commerce power of Congress, the necessary effect being a regulation of the hours of labor of children, a matter solely within State authority. (See Art. I, sec. 8, cl. 3, and Amendment 10.)

Hammer *v.* Dagenhart, 247 U. S. 251.

Act of October 6, 1917 (40 Stat. 395): The act amended the Judicial Code relating to admiralty jurisdiction by saving "to claimants the rights and remedies under the workmen's compensation law of any State," held unconstitutional as an attempt to delegate the legislative power of Congress under Article I, section 8, clause 18, and section 2, Article III, of the Constitution.

Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149.

Act of February 24, 1919 (40 Stat. 1062, sec. 213): Tax on the net income of a district judge by including his official salary in the computation diminishes that compensation, in violation of section 1, Article III, of the Constitution, and is invalid. (See also Amendment 16.)

Evans *v.* Gore, 253 U. S. 245.

Act of August 10, 1917 (40 Stat. 276, sec. 4; amended by act of October 22, 1919, 41 Stat. 297, sec. 2): The clause of the food control act penalizing sales, etc., of necessaries "at unjust or unreasonable rate of charge" held unconstitutional because penalizing an action without setting up an ascertainable standard of guilt, and therefore repugnant to the fifth and sixth amendments, which require due

[1] Act has been expressly repealed.

process of law and that persons accused of crime shall be "informed of the nature and cause of the accusation," etc.

U. S. *v.* Cohen Grocery Co., 255 U. S. 81.
Weeds v. U. S., 255 U. S., 109.

Section 8 of the Federal corrupt practices act (June 25, 1910, 36 Stat. 822; amended August 19, 1911, 37 Stat. 25), which undertakes to limit the amount of money which any candidate for the office of Representative in Congress or of United States Senator shall give, contribute, expend, use, or promise, or cause to be given, contributed, etc., in procuring his nomination or election held unconstitutional as applied to a primary election of candidates for a seat in the Senate. (See Art. I, sec. 4.)

Newberry *v.* U. S., 256 U. S. 232.

Act of February 24, 1919 (40 Stat. 1138): Held tax on child-labor-made articles (title 12, revenue act of 1918) unconstitutional. (Art. I, sec. 8, cls. 1 and 3, and Amendment 10.)

Bailey *v.* Drexel Furn. Co., 259 U. S. 20.

Act of August 24, 1921 (42 Stat. 187), known as the futures trading act: Under section 11 of the act, directing severance of valid from invalid provisions and applications, section 9, which authorizes investigations by the Secretary of Agriculture, and *semble*, section 3, imposing a tax on certain kinds of options of purchase or sale of grain, are unaffected by the conclusion that section 4, imposing the tax on sales for future delivery, and the regulations interwoven with it in subsequent sections, held invalid.

Hill *v.* Wallace, 259 U. S. 44.

Act of September 19, 1918 (40 Stat. 960), in assuming to authorize the fixing of minimum wage standards for adult women in the District of Columbia, held an unconstitutional interference with the liberty of contract.

Adkins *v.* Children's Hospital, 261 U. S. 525.

Act of March 4, 1913 (37 Stat. 974): Paragraph 64 of section 8 held void in so far as it attempted to empower the court to amend and enlarge valuations, rates, and regulations established by the public utilities commission of the District of Columbia and to make such order as in its judgment the commission should have made.

Keller *v.* Potomac Elec. Co., 261 U. S. 428.

Act of June 10, 1922 (42 Stat. 634), which, by amendment of the Judicial Code, undertakes to permit application of the workmen's compensation laws of the several States to injuries within the admiralty and maritime jurisdiction, excepting the masters and crews of vessels, held unconstitutional, for the reasons explained in Southern Pacific Co. *v.* Jensen (244 U. S. 205).

Washington *v.* Dawson Co., 264 U. S. 219.

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